UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 82014 / November 3, 2017

Admin. Proc. File No. 3-18262

In the Matter of the Application of

RICHARD ALLEN RIEMER, JR.,

For Review of Action Taken by

FINRA

ORDER DENYING STAY

Richard Allen Riemer, Jr., appeals from a FINRA decision finding that he violated FINRA rules by willfully failing to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose timely two federal tax liens and a bankruptcy filing and by providing false responses on his member firm's annual compliance questionnaires.[1] FINRA also concluded that Riemer's conduct subjected him to statutory disqualification, which renders him unable to associate with any FINRA member firm without FINRA's permission. Riemer requests that the Commission stay "the final disciplinary action of FINRA," set forth in its decision, and argues that he will be terminated from employment in the insurance industry if FINRA's statutory disqualification finding remains effective during his appeal. FINRA did not respond to Riemer's motion. For the reasons set forth below, Riemer's motion is denied.

I. Background

On October 5, 2017, FINRA issued a decision finding that Riemer violated FINRA By-Laws Article V, Section 2(c), NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010 by willfully failing to amend and timely amend his Form U4 to disclose two federal tax liens and a bankruptcy filing. FINRA also found that Riemer violated NASD Rule 2110 by providing false responses on his member firm's annual compliance questionnaires. FINRA fined

[1] *Dep't of Enf. v. Riemer*, Complaint No. 2013038986001 (Oct. 5, 2017), *available at* http://www.finra.org/sites/default/files/NAC_2013038986001_Riemer_100517_0.pdf.

Riemer $5,000 and suspended him for six months from associating with any member firm in any capacity.

FINRA also found that Riemer was subject to statutory disqualification. Under Section 3(a)(39)(F) of the Securities Exchange Act of 1934, a person is subject to statutory disqualification if, among other things, he "has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state . . . any material fact which is required to be stated therein."[2] "[A] person subject to statutory disqualification cannot become or remain associated with a FINRA member firm unless the person's member firm applies for, and is granted, in FINRA's discretion, relief from the statutory disqualification."[3] FINRA's By-Laws provide that it may grant a firm's membership continuance application if it determines that approval is "consistent with the public interest and the protection of investors."[4]

FINRA found that it was undisputed that Riemer knew about and did not disclose his bankruptcy and federal tax liens on his Form U4. FINRA concluded that Riemer acted willfully by failing to update his Form U4 under these circumstances,[5] and that the tax liens and bankruptcy were material.[6] Based on these findings, FINRA concluded that Riemer was subject to statutory disqualification. FINRA rejected Riemer's argument that its statutory disqualification finding was an excessive and punitive sanction. FINRA concluded that statutory disqualification was not a sanction, but rather a consequence imposed by the Exchange Act.

On October 20, 2017, Riemer filed an application for review of FINRA's decision with the Commission. At the same time, Riemer moved for a stay of FINRA's decision. Although FINRA rules stayed Riemer's suspension and monetary sanctions during the pendency of his appeal to the Commission,[7] Riemer asserted that absent a stay, he "will be subject to statutory

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[2] 15 U.S.C. § 78c(a)(39)(F).

[3] *Mitchell T. Toland*, Exchange Act Release No. 73664, 2014 WL 6601012, at *2 (Nov. 21, 2014) (quoting *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *2 (June 26, 2014)).

[4] FINRA By-Laws, Art. III, § 3(d).

[5] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (explaining that a finding of a willful violation of the securities laws requires that "the person charged with the duty knows what he is doing" and does not require that he also "be aware that he is violating one of the Rules or Acts") (internal quotation marks and citation omitted).

[6] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 WL 1039460, at *4 (Mar. 15, 2016) (concluding that "information concerning [applicant's] bankruptcy and tax liens" omitted from Form U4 "was material").

[7] FINRA Rule 9370(a) ("The filing with the SEC of an application for review by the SEC shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of FINRA for purposes of SEA Rule 19d-1(c)(1)."); *see also Thaddeus J. North*, Exchange Act Release No. 80490, 2017 WL 1397541, at

(*continued . . .*)

disqualification during the pendency of any review by the SEC and will lose his job." Riemer explained that he "currently works outside the securities industry as an insurance agent for National Life of Vermont," which he says has told him "it will immediately terminate" his affiliation if he is subject to statutory disqualification. "Without employment, Riemer[] . . . fears being unable to provide for his family."

II. Analysis

In deciding whether to grant a stay under Rule of Practice 401,[8] the Commission considers: (i) the likelihood that the moving party will eventually succeed on the merits of the appeal; (ii) the likelihood that the moving party will suffer irreparable harm without a stay; (iii) the likelihood that another party will suffer substantial harm as a result of a stay; and (iv) a stay's impact on the public interest.[9] The moving party has the burden of establishing that a stay is warranted.[10]

Riemer has failed to meet his burden. First, although our analysis of the merits of Riemer's appeal is necessarily preliminary, and "[f]inal resolution must await the Commission's determination of the merits of [movant's] appeal,"[11] it does not appear at this stage that there is a strong likelihood that Riemer will succeed on the merits. Indeed, Riemer does not even assert that his appeal is likely to succeed. Rather, Riemer addresses the merits of his appeal only in his application for review (and there in summary fashion), which repeats arguments that FINRA rejected below. Riemer does not attempt to rebut FINRA's findings or further develop his arguments, let alone explain why they now are likely to succeed before the Commission.[12] And it appears from his application that Riemer may have narrowed his arguments on appeal: Riemer's application for review does not specifically challenge FINRA's finding that he acted willfully, a core determination with respect to statutory disqualification.

Second, Riemer does not identify any irreparable harm that he will suffer in the absence of a stay of FINRA's decision. To establish irreparable harm, Riemer must show an injury that

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(. . . *continued*)
*1 (Apr. 19, 2017) (denying applicant's motion for a stay of monetary fine and time-limited suspensions imposed by FINRA as moot given operation of Rule 9370(a)).

8 17 C.F.R. § 201.401.

9 *Ahmed Gadelkareem*, Exchange Act Release No. 80586, 2017 WL 1735943, at *1 (Apr. 28, 2017) (citing *Mitchell T. Toland*, Exchange Act Release No. 71875, 2014 WL 1338145, at *2 (Apr. 4, 2014)).

10 *Id.*

11 *Harry W. Hunt*, Exchange Act Release No. 68755, 2013 WL 325333, at *4 (Jan. 29, 2013).

12 *Gadelkareem*, 2017 WL 1735943, at *1 (denying motion to stay where although movant's "notice of appeal identifies alleged errors in FINRA's decision, he d[id] not explain in [any] filing how his appeal [wa]s likely to succeed on the merits").

is "both certain and great" and "actual and not theoretical."[13] A stay "will not be granted [based on] something merely feared as liable to occur at some indefinite time,"[14] and a "movant must show that the alleged harm will directly result from the action which the movant seeks to [stay]."[15] Moreover, "'[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]

Riemer's claimed injuries do not satisfy this standard. Riemer asserts that without relief he will lose his job working for an insurance company, and thus his income. Assuming that a third party's threatened termination of Riemer from the insurance industry satisfies the direct causation requirement,[17] "the fact that an applicant may suffer financial detriment"—here the potential loss of income—"does not rise to the level of irreparable injury warranting issuance of a stay."[18] Riemer also states that if he loses his job he fears he will be unable to provide for his family. But these speculative "fears" do not meet the irreparable harm standard, particularly where, as here, Riemer does not assert (much less establish) that he could not find other employment.[19]

The remaining elements, which Riemer fails to address, do not support granting a stay. FINRA found that Riemer willfully failed to disclose tax liens and his bankruptcy. The Commission has explained that a registered representative's serious undisclosed financial problems "raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional."[20] And it has

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13 *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

14 *Id.* (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)).

15 *Wisconsin Gas Co.*, 758 F.2d at 674.

16 *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *3 (Nov. 13, 2015) (quoting *William Timpinaro*, Exchange Act Release No. 29927, 1991 WL 288326, at *3 (Nov. 12, 1991)); *accord Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

17 *See supra* note 15 and accompanying text.

18 *Robert J. Prager*, Exchange Act Release No. 50634, 2004 WL 2480717, at *1 (Nov. 4, 2004); *see also Gadelkareem*, 2017 WL 1735943, at *1 ("We have consistently held that mere injuries, however substantial, in terms of money, time, and energy are not enough to constitute irreparable harm.") (internal quotations and ellipsis omitted); *accord Virginia Petroleum Job. Ass'n v. Federal Power Com'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

19 *See supra* notes 13-15 and accompanying text.

20 *See generally Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *9 (Nov. 9, 2012). In *Tucker*, the Commission explained that "the judgments, bankruptcies, and liens Tucker failed to disclose on [his] Forms U4 constituted serious financial problems critical to evaluating his fitness to associate in the securities industry and the firm's ability to assess his business judgment." *Id.*

sustained prior FINRA determinations that a willful and material failure to disclose on a Form U4 renders the violator subject to statutory disqualification.[21] Any relief staying FINRA's statutory disqualification finding here while the Commission considers Riemer's appeal of that finding could endanger investors. It would allow Riemer to seek employment in the securities industry without the protections provided by FINRA's membership continuance application process, which considers the public interest when weighing whether to allow a proposed association that is otherwise prohibited. The public interest and the risk of harm to others therefore do not support Riemer's motion.[22] Particularly in light of Riemer's complete failure to attempt to establish a likelihood of success on the merits, we find that the public interest and risk of harm to others far outweighs any claimed irreparable harm.

Accordingly, IT IS ORDERED that the motion by Richard Allen Riemer, Jr., to stay the effect of FINRA's decision is denied.

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

Brent J. Fields
Secretary

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[21] *See David Adam Elgart*, Exchange Act Release No. 81779, 2017 WL 4335050, at *4-6 (Sept. 29, 2017).

[22] *See Bernard D. Gorniak*, Exchange Act Release No. 35996, 1995 WL 442063, at *2 (July 20, 1995) (noting that the securities business "presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants") (internal quotation marks and citation removed).