

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93566 / November 12, 2021

Admin. Proc. File No. 3-20639

In the Matter of the Application of

DREAMFUNDED MARKETPLACE, LLC and
MANUEL FERNANDEZ

For Review of Disciplinary Action Taken by

FINRA

Appeal filed: October 28, 2021
Application for stay filed: October 28, 2021
Last brief received: November 3, 2021

ORDER DENYING MOTION FOR A STAY

DreamFunded Marketplace, LLC (“DreamFunded”) and Manuel Fernandez (collectively, “Applicants”) appeal from FINRA disciplinary action finding that Applicants violated certain SEC Regulation Crowdfunding rules and FINRA Funding Portal rules. For those violations, FINRA imposed three independent expulsions against DreamFunded and three independent bars against Fernandez. Applicants now move to stay those expulsions and bars pending the Commission’s consideration of their appeal. FINRA opposes the motion. Because Applicants have not met their burden for granting a stay, the motion is denied.

I. Background

Fernandez established DreamFunded in March 2016 to serve as an intermediary for securities-based crowdfunded offerings through its online funding portal—DreamFunded.com. From July 2016 to November 2017, DreamFunded was a FINRA funding portal member. Fernandez was its chief executive officer, chief financial officer, and chief compliance officer.

In February 2018, FINRA’s Department of Enforcement filed a ten-cause complaint against Applicants. The first cause of action alleged that Applicants violated FINRA Funding Portal Rule 800(a) and FINRA Rule 8210 by failing to respond fully and completely to FINRA’s requests for certain financial records and bank account statements. Specifically, Applicants allegedly provided only a portion of the requested bank account statements for DreamFunded

and its parent company, no bank statements for Fernandez, no bookkeeping or accounting records for DreamFunded, and no bookkeeping or accounting records for its parent company.

The third cause of action alleged that Applicants made false, exaggerated, unwarranted, promissory, and misleading statements in violation of FINRA Funding Portal Rules 200(b) and 200(c)(2). The complaint alleged that Applicants made a false statement and engaged in a deceptive device when they shared a video clip showing Fernandez making a purported \$1 million investment in an issuer. Applicants also allegedly made false and misleading statements on their funding portal platform regarding issuer due diligence. The complaint further alleged that real estate advertisements posted to the funding portal website were misleading.

The remaining causes of action concerned alleged violations resulting from the Applicants' gatekeeping, investor protection, and supervisory failures. Cause two alleged that Applicants violated SEC Regulation Crowdfunding Rule 301(c)(2) and FINRA Funding Portal Rule 200(c)(3) by failing to deny certain issuers access to the funding portal due to circumstances surrounding their offerings. Cause four alleged that Applicants violated SEC Regulation Crowdfunding Rule 301(a) by failing to have a reasonable basis for believing that two issuers had complied with their disclosure obligations under Section 4A(b) of the Securities Act of 1933. Cause five alleged that Applicants failed to conduct issuer background checks and securities enforcement regulatory histories as required by SEC Regulation Crowdfunding Rule 301(c)(1). Causes six through nine alleged that Applicants violated SEC Regulation Crowdfunding Rules 304(c)(1), 304(b)(2), 303(d), and 303(f) by failing to provide investors with required notice of material changes, early closings, investment cancellations, and investment confirmations. Cause ten alleged that Applicants failed to implement policies and procedures reasonably designed to supervise the funding portal's activities and associated persons in violation of SEC Regulation Crowdfunding Rule 403(a) and FINRA Funding Portal Rule 300(a). All ten causes of action also alleged a violation of FINRA Funding Portal Rule 200(a), the ethical standards rule for funding portals and their associated persons.

A FINRA Hearing Panel found Applicants liable under nine causes of action. In making its findings, the Hearing Panel determined that Fernandez was not a credible witness and described his testimony as "evasive," "vague," and "inconsistent." For Applicants' violations of cause one, the Hearing Panel expelled DreamFunded from FINRA funding portal membership and barred Fernandez from associating with any FINRA funding portal member in any capacity. For cause three, the Hearing Panel also expelled DreamFunded and barred Fernandez. For the remaining violations, the Hearing Panel assessed, but did not impose, various sanctions including suspensions, monetary penalties, letters of caution, and submission of a supervisory plan.

Applicants appealed to FINRA's National Adjudicatory Council (the "NAC"), and FINRA's Department of Enforcement cross-appealed. The NAC affirmed the Hearing Panel's findings of liability and its decision to dismiss cause four and certain allegations in cause two. The NAC relied, in part, on the Hearing Panel's finding that Hernandez was not a credible witness, noting that "Fernandez's credibility, or, rather, the lack thereof, is decisive in the liability findings." The NAC affirmed the bar and expulsion imposed for Applicants' failure to respond fully to FINRA's information and document requests. It also affirmed the bar and expulsion imposed for Applicants' false and misleading statements concerning an investment in

an issuer, issuer due diligence, and real estate advertisements. But unlike the Hearing Panel, the NAC aggregated Applicants' other violations stemming from their gatekeeping, investor protection, and supervisory failures, and imposed a third expulsion against DreamFunded and bar against Fernandez. Applicants now seek a stay of the expulsions and bars pending their appeal.

II. Analysis

A stay pending appeal is an “extraordinary remedy,” and the movant bears the burden of establishing that relief is warranted.¹ We emphasize that our conclusions with respect to a stay motion “are not final,”² and that “[f]inal resolution must await the Commission’s determination of the merits of [Applicants’] appeal.”³ We base the conclusions that we reach in considering a stay motion “only on a review of the record and arguments currently before us.”⁴

In deciding whether to grant a stay under Rule of Practice 401,⁵ we consider whether the movant has established that (i) there is a strong likelihood that it will eventually succeed on the merits of the appeal; (ii) it will suffer irreparable harm without a stay; (iii) another party will suffer substantial irreparable harm as a result of a stay; and (iv) a stay is likely to serve the public interest.⁶ “The appropriateness of a stay turns on a weighing of the strengths of these four factors; not all four factors must favor a stay for a stay to be granted.”⁷ “The first two factors are the most critical, but a stay decision rests on the balancing of all four factors.”⁸

¹ See *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 & n.44 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432–34 (2009)); accord *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *2 & n.3 (Feb. 2, 2021); *Alpine Sec. Corp.*, Exchange Act Release No. 87599, 2019 WL 6251313, at *5 & n.51 (Nov. 22, 2019); *Mark E. Laccetti*, Exchange Act Release No. 79138, 2016 WL 6137057, at *2 & n.10 (Oct. 21, 2016).

² *Bloomberg*, 2018 WL 3640780, at *7.

³ *Se. Invs., N.C., Inc.*, Exchange Act Release No. 86097, 2019 WL 2448245, at *2 (June 12, 2019) (quoting *Harry W. Hunt*, Exchange Act Release No. 68755, 2013 WL 325333, at *4 (Jan. 29, 2013)); see also *Alpine*, 2019 WL 6251313, at *6 (“Because [the movant] seeks relief in a stay motion before full development of the record, our analysis is based on the arguments and evidence before us, and we emphasize that [f]inal resolution must await the Commission’s determination of the merits of [the movant’s] appeal.”) (internal quotation marks omitted).

⁴ *Bloomberg*, 2018 WL 3640780, at *7.

⁵ 17 C.F.R. § 201.401; see also Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2) (authorizing Commission to stay challenged self-regulatory organization action).

⁶ *Windsor St. Cap., L.P.*, Exchange Act Release No. 83340, 2018 WL 2426502, at *3 (May 29, 2018); *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017); *Ahmed Gadelkareem*, Exchange Act Release No. 80586, 2017 WL 1735943, at *1 (Apr. 28, 2017).

⁷ *Bloomberg*, 2018 WL 3640780, at *7.

⁸ *Id.*

To obtain a stay under this framework, the movant need not necessarily establish that it is likely to succeed on the merits of its appeal, but it must at least show “that the other factors weigh heavily in its favor” and that it has “raised a ‘serious legal question’ on the merits.”⁹ “Because the moving party must not only show that there are ‘serious questions’ going to the merits, but must additionally establish that the ‘balance of hardships tips *decidedly* in its favor,’ its overall burden is no lighter than the one it bears under the ‘likelihood of success’ standard.”¹⁰

Applicants have not met that standard. Rather than addressing any of the stay factors outlined above, Applicants’ application for review merely “request[s] a stay of the decision until the appeal hearing decision is complete,” provides biographical information about Fernandez, and asserts “some facts to consider” on appeal. Applicants do not describe how those assertions relate to any of the four stay factors, nor do Applicants explain why any of those assertions entitle them to a stay of the expulsions and bars FINRA imposed. Nevertheless, we consider Applicants’ contentions in their application for review in evaluating their motion for a stay.

A. Applicants fail to raise serious questions on the merits.

Applicants do not identify why they are likely to succeed in their appeal or identify any serious legal question.¹¹ Instead, they set forth a list of “facts to consider” and assert that certain findings FINRA made were in error without citing to the record or any supporting authority.¹² Such generalized claims of error are insufficient to establish that a stay is warranted.¹³

⁹ *Zipper*, 2017 WL 5712555, at *6 (Nov. 27, 2017) (quoting *Sherley v. Sebelius*, 644 F.3d 388, 398 (D.C. Cir. 2011)).

¹⁰ *Id.* (cleaned up) (quoting *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original) (internal quotation marks and citation omitted)).

¹¹ *See Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 WL 5067462, at *2–3 (Nov. 3, 2017) (finding a “complete failure to attempt to establish a likelihood of success on the merits” where the movant did “not even assert that his appeal is likely to succeed,” “attempt to rebut FINRA’s findings or further develop his arguments,” or “explain why they now are likely to succeed” despite having been rejected by FINRA).

¹² *Compare* Rule of Practice 401(a), 17 C.F.R. § 201.401(a) (requiring that all motions “be supported by affidavits or other sworn statements or copies thereof” and that “[p]ortions of the record relevant to the relief sought, if available to the movant, shall be filed with the motion”), *with* Rule of Practice 420(c), 17 C.F.R. § 201.420(c) (stating that applications for review “shall identify the determination complained of and set forth in summary form a brief statement of the alleged errors in the determination and supporting reasons therefor”).

¹³ *See, e.g., Malarkey v. Texaco, Inc.*, 794 F. Supp. 1248, 1250 (S.D.N.Y. 1992) (“Significantly, defendant does not provide supporting legal argument or case law and instead relies solely on its bald assertion that it has ‘clearly “raised serious legal questions.”’ Thus, although defendant has provided a list of issues it wishes to raise before the Court of Appeals, it has not made the required ‘strong showing that [it] is likely to succeed on the merits.’”) (alteration in original) (citation omitted).

For example, Applicants assert that they provided FINRA staff with “an email with a Drop[B]ox link . . . with the full documents,” but Applicants do not provide any factual support for this assertion. Applicants also seem to assert that they are not liable for the fraudulent misrepresentations concerning the issuer investment because Fernandez “was in front of the camera,” “not the producer,” and “can’t control what they put out.” However, the violation stemmed from Applicants’ own sharing of the video clip via social media and DreamFunded’s website. Applicants make several other assertions of factual and procedural error, but Applicants offer no support for these assertions and the record before us does not substantiate any of them. We therefore find that Applicants have not established either a likelihood of success on the merits or, at a minimum, a serious legal question going to the merits.

B. Applicants have not established that they will suffer irreparable harm absent a stay.

To establish irreparable harm, the movant “must show an injury that is ‘both certain and great’ and ‘actual and not theoretical’” and “‘that the alleged harm will directly result from the action which the movant seeks to [stay].’”¹⁴ Here, Applicants ask that the Commission not “end a person’s crowdfunding career.” But DreamFunded has not operated since withdrawing its registration with the Commission in October 2017 and terminating its funding portal membership with FINRA in November 2017.¹⁵ And Applicants’ reference to Fernandez’s “crowdfunding career” is too indistinct to constitute a showing of irreparable harm.¹⁶ Thus, Applicants have not explained how either DreamFunded or Fernandez are likely to suffer irreparable harm without a stay.

C. The risk of harm to others and the public interest weigh against staying the expulsions against DreamFunded and bars against Fernandez.

Applicants’ request for a stay contains no mention of how granting a stay would not result in harm to others or be in the public interest. We find that both factors weigh against a stay. Applicants characterize their violations as mere “mistakes” and “errors,” but FINRA found knowing and serious violations that presented a risk to investors and the market.¹⁷ FINRA also found that Applicants’ violations demonstrate “abandonment of their gatekeeper, investor

¹⁴ *Zipper*, 2017 WL 5712555, at *4 (alteration in original).

¹⁵ *Cf. Jones*, 2021 WL 396767, at *3 (denying motion for a stay where movants “submitted no information about [the company’s] expenses, level of profitability, or exhaustion of available resources that would allow us to assess the degree of harm”).

¹⁶ *See Paul H. Giles*, Exchange Act Release No. 92177, 2021 WL 2419849, at *5 & n.36 (June 14, 2021) (citing *Se. Invs.*, 2019 WL 2448245, at *4) (determining that movant’s allegations about his “likely financial situation lack sufficient detail to demonstrate that he would be unable to find another job or be in financial distress absent a stay”).

¹⁷ *See, e.g., Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at *5 (Feb. 11, 2013) (citing *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *4 (Apr. 11, 2018), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009)) (finding that risk of harm to others and the public interest supported denying stay of a bar for failing to comply with Rule 8210 request, which subverted FINRA’s “ability to execute its regulatory responsibilities”).

protection, and supervisory obligations for the crowdfunded offerings and transactions that they facilitated through their funding portal.” Permitting Applicants to participate in the crowdfunding space during the pendency of their appeal raises a substantial risk of harm to others and the public interest. We thus conclude that, at this stage in the proceeding, the final two factors both weigh against a stay of the expulsions and bars during Applicants’ appeal.

* * *

Applicants have failed to satisfy their burden of establishing that a stay is warranted. They have not shown at this time that their appeal presents a serious legal question on the merits; that they would suffer irreparable harm absent a stay; or that the risk of harm to others or the public militates in favor of a stay. Accordingly, it is ORDERED that Applicants’ motion for a stay pending Commission review of their appeal is denied.

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

Vanessa A. Countryman
Secretary