UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96391 / November 28, 2022

Admin. Proc. File No. 3-21222

In the Matter of the Application of

LAURENCE G. ALLEN

For Review of Action Taken by

FINRA

Appeal filed: October 24, 2022
Motion for stay filed: October 24, 2022
Last brief received: November 3, 2022

ORDER DENYING MOTION FOR A STAY

Laurence G. Allen appeals from a FINRA decision denying him permission to continue to associate with FINRA member firm NYPPEX, LLC ("NYPPEX" or the "Firm").[1] Allen also moves to stay FINRA's decision pending the Commission's consideration of his appeal. Because Allen has not met his burden for justifying a stay, we deny the motion.

I. Background

A. The legal framework.

FINRA's By-Laws provide that a person is disqualified from associating with a member firm if such person becomes subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.[2] Section 3(a)(39) provides that a person is subject to a statutory disqualification if they have been "enjoined from any action, conduct, or

---

[1] *See In the Matter of the Continued Ass'n of Laurence Allen as a Gen. Sec. Representative and Gen. Sec. Principal with NYPPEX, LLC*, FINRA No. SD-2265 (Sept. 23, 2022) [hereinafter "*NAC Decision*"], https://www.finra.org/sites/default/files/2022-10/sd-2265-allen-092322.pdf.

[2] FINRA By-Laws, Art. III, § 4.

practice specified in" Exchange Act Section 15(b)(4)(C).[3] And Section 15(b)(4)(C) references injunctions by any court of competent jurisdiction from "engaging in or continuing any conduct or practice in connection . . . with the purchase or sale of any security."[4]

FINRA's By-Laws provide that FINRA may grant relief from an ineligibility to associate, and its rules set forth the procedures for a member firm to obtain that relief by sponsoring the proposed association of a person subject to a disqualification.[5] FINRA may grant a firm's "membership continuance application" only if it determines that the continued association of the disqualified person would be "consistent with the public interest and the protection of investors."[6] The burden rests on the applicant to show that, despite the disqualification, it is in the public interest to permit the requested association.[7]

The sponsoring firm or the disqualified individual may appeal FINRA's denial of a membership continuance application to the Commission.[8] The Commission affords FINRA discretion in determining whether to approve or deny a membership continuance application.[9]

B. Allen becomes subject to a statutory disqualification.

Allen entered the securities industry in 1982. He founded NYPPEX in 1999 and is its Chief Executive Officer ("CEO") and managing member. Allen also indirectly holds a majority ownership interest in NYPPEX Holdings, LLC ("NYPPEX Holdings"), which wholly owns NYPPEX.

Allen's statutory disqualification stems from a series of injunctions issued against him after the Attorney General of the State of New York ("NYAG") investigated allegations that Allen made misrepresentations to investors and "misappropriated millions of dollars of investor funds for his own personal enrichment."[10] In December 2018, the NYAG requested, and a New York state trial court issued, an order temporarily enjoining Allen from engaging in securities

---

3 15 U.S.C. § 78c(a)(39)(F).

4 15 U.S.C. § 78o(b)(4)(C).

5 FINRA By-Laws, Art. III, § 3(d); FINRA Rules 9521-27.

6 *Commonwealth Cap. Sec. Corp.*, Exchange Act Release No. 89260, 2020 WL 3868981, at *8 (July 8, 2020) (internal quotation marks and citation omitted).

7 *Id.*

8 *Shad Nhebi Clayton*, Exchange Act Release No. 93760, 2021 WL 5907835, at *5 (Dec. 13, 2021).

9 *Commonwealth Cap. Sec. Corp.*, 2020 WL 3868981, at *8.

10 *People by James v. Allen*, 156 N.Y.S.3d 171, 173 (N.Y. App. Div. 2021).

fraud and violating New York's Martin Act.[11] The Martin Act "prohibits fraudulent practices relating to the 'purchase, exchange, investment advice or sale of securities.'"[12]

In December 2019, while the temporary injunction remained in place, the NYAG filed a complaint against Allen alleging that he engaged in a decade-long scheme "to enrich himself and NYPPEX at the expense of" investors in ACP X, LP ("ACP" or the "Fund"), a private equity fund Allen created.[13] In February 2020, following a five-day hearing, the New York trial court granted a preliminary injunction, enjoining Allen from violating the Martin Act.[14] In its opinion, the court observed that Allen's misconduct reflected "a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums of ACP capital, and outright fraud."[15]

Following a four-day bench trial, the New York trial court issued a permanent injunction in February 2021.[16] The court found that Allen made fraudulent misrepresentations to ACP investors and misappropriated funds.[17] The court found that "through a maze of entities owned and/or controlled by" Allen, much of the "capital contributed to [ACP] was substantially diverted by a hopelessly conflicted Allen toward funding NYPPEX." NYPPEX then used these funds to pay Allen's "exorbitant NYPPEX annual salaries totaling approximately $6 million, as well as . . . the salaries of his staff."[18] The court found that ACP's investment in NYPPEX was "in no way consistent with the investment thesis contained in" the Fund's governing documents (*i.e.*, the Private Placement Memorandum ("PPM") and the Limited Partnership Agreement ("LPA")).[19]

For his misconduct, the trial court enjoined Allen from violating the Martin Act, enjoined him from "[f]acilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in" the Fund and from making distributions from or investments on behalf of

---

11 *New York v. Allen*, No. 452378/2019, 2021 WL 394821, at *6 (N.Y. Sup. Ct. Feb. 4, 2021).

12 *Id*. (quoting N.Y. General Business Law § 352).

13 Complaint ¶ 7, *New York v. Allen*, No. 452378/2019, 2019 WL 6633796 (N.Y. Sup. Ct. Dec. 4, 2019). The complaint also named NYPPEX Holdings as a defendant and NYPPEX as a relief defendant.

14 *New York v. Allen*, No. 452378/2019, 2020 WL 554341, at *3 (N.Y. Sup. Ct. Feb. 4, 2020).

15 *Allen*, 2020 WL 554341, at *2.

16 *Allen*, 2021 WL 394821, at *3, 7-8.

17 *Id.* at *7.

18 *Id.* at *7-8.

19 *Id.*

the Fund, and ordered the defendants to disgorge approximately $6.8 million.[20] The intermediate appellate court affirmed,[21] and the New York Court of Appeals denied leave to appeal.[22]

As a result of the injunctions the New York trial court entered against Allen, he became subject to a statutory disqualification pursuant to Exchange Act Section 3(a)(39).[23] The statutory disqualification disqualified Allen from associating with a FINRA member firm.[24]

C. FINRA denies NYPPEX's membership continuance application.

In February 2020, shortly after the New York trial court issued the preliminary injunction, NYPPEX filed a membership continuance application with FINRA.[25] NYPPEX's application requested permission for Allen to continue to associate with the Firm despite his statutory disqualification. As part of its application, NYPPEX proposed that Michael Schunk, NYPPEX's Chief Compliance Officer ("CCO"), would be Allen's primary supervisor and that NYPPEX would subject Allen to a heightened supervisory plan.

FINRA's National Adjudicatory Council (the "NAC") denied NYPPEX's application on September 23, 2022.[26] The NAC provided two independent bases for its denial. First, it "conclude[d] that Allen's recent and securities-related disqualifying event involved serious and extensive misconduct, including misappropriation of investor funds and fraud, and weighs

---

20 *Id.*

21 *Allen*, 156 N.Y.S.3d at 173.

22 *People by James v. Allen*, No. 2022-521, 2022 WL 11447785, at *1 (N.Y. Oct. 20, 2022).

23 *See supra* notes 3-4 and accompanying text (explaining that an injunction against conduct in connection with the purchase or sale of securities constitutes a statutory disqualification).

24 *See supra* note 2 and accompanying text (explaining that a statutorily disqualified individual is disqualified by FINRA's By-Laws from associating with FINRA member firms).

25 *See supra* notes 5-6 and accompanying text (explaining that FINRA may grant relief from the ineligibility to associate through the filing of a membership continuance application).

26 In a separate disciplinary proceeding, FINRA also alleged that Allen became statutorily disqualified after the New York court entered the temporary injunction in December 2018, and that NYPPEX improperly permitted Allen to continue to associate with the firm after this date without filing a membership continuation application. In August 2022, a hearing panel found that Allen and NYPPEX engaged in this and other misconduct and imposed as sanctions a bar on Allen and an expulsion as to NYPPEX. *See FINRA Extended Hearing Panel Expels NYPPEX, Bars Former CEO Laurence Allen and Suspends Current CEO and CCO Michael Schunk* (Sept. 30, 2022), https://www.finra.org/media-center/newsreleases/2022/finra-extended-hearing-panel-expels-nyppex-bars-former-ceo-laurence. Allen and NYPPEX have appealed that decision to FINRA's NAC, and the appeal stays the sanctions imposed. We neither rely upon nor consider that pending disciplinary matter for purposes of this stay motion.

heavily against" NYPPEX's application.[27] The NAC noted that the New York court had found that Allen engaged in an extensive scheme involving fraud, misappropriation, self-dealing, and, throughout the course of his misconduct, Allen and his affiliated defendants had made numerous material misrepresentations in communications to investors.[28] The NAC also concluded that insufficient time had passed since February 2021, when the New York court entered the permanent injunction, "for Allen and the Firm to demonstrate that Allen is currently able to comply with securities laws and regulations and to refrain from engaging in misconduct."[29]

As a second, "independent basis for [its] denial," the NAC found that NYPPEX had "not demonstrated that it can stringently supervise Allen." The NAC noted that Allen is NYPPEX's owner, "its largest producer, a large lender to [NYPPEX Holdings], and Schunk's supervisor"; that Schunk, Allen's proposed supervisor, "has a regulatory and disciplinary history that casts doubt on his ability to stringently supervise Allen"; and that Schunk was NYPPEX's CCO and Allen's supervisor during the time when Allen committed the misconduct underlying the injunctions issued by the New York court.[30] The NAC also found that NYPPEX's proposed heightened supervisory plan "lack[ed] detail," "consist[ed] of generalized boilerplate," and failed to ensure either the independence of Allen's proposed supervisors or that Allen would not commit future misconduct similar to that underlying the New York trial court injunctions.[31] Nor was the NAC persuaded by Allen's assertion that "the Firm had recently engaged a consultant to draft a revised heightened plan of supervision," explaining that the supervisory plan actually proposed—not some hypothetical plan—must be sufficient to warrant approval.[32]

For these reasons, the NAC concluded that Allen's continued association with NYPPEX "is not in the public interest and would create an unreasonable risk of harm to the markets and investors," and it denied NYPPEX's application.[33] Allen filed his application for review, along with his stay request, with the Commission on October 24, 2022.

II. Analysis

A stay pending appeal is an "'extraordinary remedy,'" and the movant bears the burden of establishing that relief is warranted.[34] We emphasize that our determinations with respect to a

---

27 *NAC Decision*, slip op. at 15.

28 *Id.*

29 *Id.*

30 *Id.* at 15, 19-20.

31 *Id.* at 20-21.

32 *Id.* at 22.

33 *Id.* at 23.

34 *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432–34 (2009)); *accord Alpine Sec. Corp.*,

stay motion are not final, and that "[f]inal resolution must await the Commission's determination of the merits of [an applicant's] appeal."[35] We base the conclusions we reach in considering a stay motion "only on a review of the record and arguments currently before us."[36]

In determining whether to grant a stay under Rule of Practice 401,[37] we consider whether (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest.[38] "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."[39] "The first two factors are the most critical, but a stay decision rests on the balancing of all four factors."[40] To obtain a stay under this framework, a movant need not establish that it is likely to succeed on the merits, 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."[41] Allen fails to satisfy his burden.

A. Allen has not shown that his appeal raises a serious legal question on the merits.

We first analyze the likelihood that Allen will prevail on the merits of his appeal of FINRA's decision denying NYPPEX's application. Exchange Act Section 19(f) governs our review.[42] "That section directs the Commission to dismiss the appeal if it finds: (i) that the specific grounds on which FINRA based its action exist in fact; (ii) that the action was in

---

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).

35 *Bloomberg*, 2018 WL 3640780, at *7 (brackets in original) (quoting *Harry W. Hunt*, Exchange Act No. 68755, 2013 WL 325333, at *4 (Jan. 29, 2013)).

36 *Id.*

37 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).

38 *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017).

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

40 *Id.*

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

42 *Zipper*, 2017 WL 5712555, at *3.

accordance with FINRA's rules; and (iii) that the relevant rules are, and were applied in a manner, consistent with the purposes of the Exchange Act."[43]

Allen does not dispute that the injunctions the New York trial court entered against him render him statutorily disqualified. Rather, Allen's stay motion presents "generalized claims of error" with respect to the grounds on which FINRA based its denial of the membership continuance application, which "are insufficient to establish that a stay is warranted."[44] In particular, Allen has not shown that he is likely to succeed in challenging either of the NAC's determinations, each of which would independently justify its denial of the application: *first*, that Allen's disqualifying event was recent and involved serious and extensive misconduct; and, *second*, that the proposed heightened supervisory plan was inadequate and Allen's proposed supervisors lacked the necessary experience and independence to appropriately supervise him.

As to the first of these grounds, Allen attacks the findings and conclusions in the underlying New York state court orders but eventually concedes (correctly) that he is precluded from collaterally attacking them.[45] Indeed, Allen ultimately admits that "[t]he trial court order exists as a matter of fact, and there is nothing [he] can do about it."[46] The NAC appropriately

---

[43] *Zipper*, 2017 WL 5712555, at *3; *see also* 15 U.S.C. § 78s(f) (providing that the Commission "shall dismiss the proceeding" if these criteria are met, unless it finds that such denial "imposes any burden on competition not necessary or appropriate in furtherance of the purposes" of the Exchange Act). Allen does not claim, nor does the record support finding, that FINRA's action imposes such a burden. Allen also does not argue, nor does the record support finding, that FINRA misapplied its rules in denying the application or that FINRA applied its rules in a manner that was inconsistent with the Exchange Act.

[44] *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *3 (Feb. 2, 2021).

[45] *See Robert J. Escobio*, Exchange Act Release No. 83501, 2018 WL 3090840, at *8 (June 22, 2018) (noting that "collateral estoppel prevented [the movant] 'from re-litigating both the factual findings and legal conclusions of the' injunctive action." (quoting *Asensio & Co.*, Exchange Act Release No. 68505, 2012 WL 6642666, at *11 (Dec. 20, 2012))).

[46] Allen insists, nevertheless, that "notwithstanding what the trial court found, the Fund's operative contracts continue to govern, and those contracts clearly contradict the trial court's findings." But collateral estoppel forecloses this argument. Allen argued to the New York courts that the PPM and LPA contain language that authorized his conduct. *See, e.g.*, Br. for the Defendants-Appellants at 42, *New York v. Allen*, Nos. 2020-01772, 2020-03705, 2021-00701, 2021-00726, 2021-00942, 2021 WL 4951997 (N.Y. App. Div. Mar. 22, 2021) (arguing that Allen called as witnesses ACP investors "who testified that they were not deceived by the PPM [or] the LPA"); *id.* at 44-45 (arguing that "investments in NYPPEX Holdings and the other conduct at issue were expressly permitted by and disclosed in the Fund's contractual documents"). The New York courts necessarily rejected Allen's contentions regarding the meaning and interpretation of the Fund's contractual documents, and he is not free to relitigate

concluded, based on the findings underlying the New York injunctions, that Allen engaged in serious fraudulent misconduct—including the misappropriation of millions of dollars from the Fund and repeated fraudulent misrepresentations.[47] Moreover, the NAC justifiably concluded that the passage of less than two years since the New York court entered its permanent injunction in February 2021 was insufficient to demonstrate that Allen could comply with securities laws and regulations going forward.[48] Allen therefore has not raised a serious legal question concerning the merits of the NAC's conclusion that the extent of Allen's misconduct and the recency of Allen's disqualifying event warrant denial of NYPPEX's application.

As to the second of the grounds cited by the NAC, Allen asserts that the NAC's conclusion that NYPPEX had not demonstrated that it could effectively supervise him "ignore[s] reality and def[ies] common sense." Allen relies on the relative sophistication of NYPPEX's customer base and its "lack of [retail] customers," but we disagree that these circumstances diminish the need for a robust supervisory plan.[49] The New York courts found that Allen committed fraud, and "both sophisticated and unsophisticated investors are entitled to protections

---

those issues now. *See* Restatement (Second) of Judgments § 27 & cmts. c & o (1982). And the deferential standard of review that, according to Allen, applied to the New York trial court's findings does not diminish the preclusive effect that is afforded them here. *See Winters v. Lavine*, 574 F.2d 46, 62-63 (2d Cir. 1978); Restatement (Second) of Judgments § 28 cmt. a.

[47] *See Commonwealth Cap. Sec. Corp.*, 2020 WL 3868981, at *4 (July 8, 2020) (agreeing with the NAC that intentional misuse of investor funds was "serious" and supported denying a membership continuance application); *Escobio*, 2018 WL 3090840, at *5 (agreeing with the NAC that the seriousness of the underlying misconduct—a fraud in which "customers lost at least $2.1 million"—supported denying a membership continuance application).

[48] *See Escobio*, 2018 WL 3090840, at *5 (agreeing with the NAC's conclusion that an injunction entered less than two years prior supported the denial of a membership continuance application); *Eric J. Weiss*, Exchange Act Release No. 69177, 2013 WL 1122496, at *7 (Mar. 19, 2013) (finding that FINRA properly concluded that a disqualifying order was recent when it was entered 3.5 years prior to the filing of the membership continuance application). Allen suggests in passing that the dates of his misconduct, rather than the date of the New York trial court's injunction, are the appropriate anchors for evaluating recency. The NAC did not err, however, in using the date of the permanent injunction. *See Escobio*, 2018 WL 3090840, at *5 (finding that "the NAC properly evaluated the recency of [the individual's] statutory disqualification by considering the date of the permanent injunction," rather than the dates of the underlying misconduct). Moreover, to the extent Allen complains of the passage of time before entry of a permanent injunction, the New York court explicitly found that the delay in holding the bench trial was "largely due to a number of withdrawals by various counsel" for Allen. *Allen*, 2021 WL 394821, at *3.

[49] *See Commonwealth Cap. Sec. Corp.*, 2020 WL 3868981, at *7 (finding a proposed supervisory plan inadequate despite the broker-dealer's "lack of customers").

against abuse under the securities laws."[50] The NAC's concerns about NYPPEX's inability to effectively supervise Allen because Allen controls NYPPEX therefore have no less force merely on account of the relative sophistication of NYPPEX's customers.[51] Moreover, the NAC's findings on this point did not rely only on Allen's status as a control person. The NAC also supported its conclusion regarding the insufficiency of NYPPEX's proposed supervision by noting that Schunk, Allen's proposed supervisor, had a disciplinary history that itself included supervisory violations. It further noted that Schunk was NYPPEX's CCO and Allen's supervisor during the time when Allen committed the misconduct underlying the New York injunctions.

Furthermore, the NAC found that NYPPEX's proposed supervisory plan was inadequate. For example, the plan lacked detail, contained boilerplate, did not sufficiently provide for documentation of the Firm's compliance with the plan, failed to ensure Allen's proposed supervisors were independent, and lacked provisions to guard against Allen committing future misconduct similar to that underlying the injunctions.[52] The NAC also concluded that NYPPEX's hiring of a consultant to draft a revised supervisory plan was insufficient to justify approval of the application, and it appears that that conclusion was appropriate here.[53]

Finally, Allen contends in conclusory fashion and without citing legal authority that FINRA's decision was "arbitrary and capricious" because FINRA "routinely allows membership continuation requests for individuals who have violated securities laws, committed serious felonies and engaged in other misconduct." But Allen fails to identify even a *single instance* of such a purportedly "routine" practice in his stay motion, let alone demonstrate a close similarity

---

[50] *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *13 (Jan. 9, 2015), *petition denied*, 641 F. App'x 27 (2d Cir. 2016)).

[51] *See Asensio*, 2012 WL 6642666, at *6 (rejecting contention that FINRA should have approved new member application despite principal's prior statutory disqualification where firm proposed that it would only sell securities to "sophisticated investment professionals" because the statutory disqualification resulted from principal's failure to cooperate with a FINRA investigation pursuant to FINRA Rule 8210, which applies to all member firms, and therefore the sophistication of firm's proposed clients was irrelevant to the likelihood of future violations).

[52] *NAC Decision*, slip op. at 20-21. *See Escobio*, 2018 WL 3090840, at *7 ("We have previously found that supervisory plans that . . . 'lack[] detail' are insufficient." (brackets in original) (quoting *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *10 (Sept. 13, 2010))); *Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 WL 2887272, at *15 (June 26, 2014) (agreeing with FINRA's denial of a membership continuance application where the proposed supervisory plane was skeletal and lacked specificity).

[53] *See Commonwealth Cap. Sec. Corp.*, 2020 WL 3868981, at *7 (noting that "we have held that FINRA is 'fully justified' in requiring that a firm propose a sufficient supervisory plan 'before approving the application, rather than accepting general assurances that [the firm] would devise an appropriate plan' afterwards" (brackets in original) (quoting *Timothy P. Pedregon, Jr.*, Exchange Act Release No. 61791, 2010 WL 1143089, at *6 n.32 (Mar. 26, 2010))).

between any potential comparators and his own circumstances. And although Allen cites cases in which FINRA granted membership continuance applications in his reply brief, we ordinarily deem arguments raised for the first time in a reply brief as forfeited.[54] This case shows why. FINRA has not had the opportunity to address the cases that Allen cites. In any event, each membership continuance application must be considered on its own facts.[55] Allen has not demonstrated that the cases he cites are so similar to his own facts and circumstances that it was arbitrary and capricious for FINRA to deny his application. Based on the record presently before us, we reject Allen's contention that FINRA singled him out for disparate treatment. Accordingly, we find that, for purposes of this motion, Allen has failed to raise a serious question on the merits—let alone demonstrate a strong likelihood of success.

B. Allen has not shown that he or NYPPEX will suffer irreparable harm absent a stay.

With respect to irreparable harm, Allen argues that he and NYPPEX "will suffer tremendous and irreparable harm" and "irreparable damage and hardship which cannot be reversed or compensated for thereafter" if Allen were "forced to terminate his association with NYPPEX pending Commission review." This, we are told, is due to that fact that "NYPPEX depends on Mr. Allen – its founder and principal, and a pioneer in the development of secondary private markets." But Allen did not support his assertions of irreparable harm with a timely declaration or affidavit.[56] And without submitting evidence about an inability to meet financial obligations or continue in business, we cannot find that NYPPEX will suffer irreparable harm absent a stay.[57] For instance, Allen does not explain why other NYPPEX employees would be unable to step in and run NYPPEX while Commission review proceeds.

In his reply, Allen states that denial of a stay will require him to immediately discontinue his association with NYPPEX, "which will deprive him of his livelihood and terminate his 36+ year career in the securities industry before his appellate rights are exhausted." As discussed

---

54 *See, e.g., Ustocktrade Securities, Inc.*, Exchange Act No. 95464, 2022 WL 3273500, at *2 (Aug. 10, 2022); *Jones*, 2021 WL 396767, at *3 n.17.

55 *See Weiss*, 2013 WL 1122496, at *7 (rejecting contention that FINRA erred in denying membership continuance application based on comparison of disqualifying event to those at issue in other denials because the "relevant inquiry" is whether, "under the totality of the circumstances, a person's continued association with a member firm is inconsistent with the public interest and the protection of investors" (internal quotation marks and citation omitted)).

56 *Cf. Scottsdale Cap. Advisors Corp.*, Exchange Act Release No. 83783, 2018 WL 3738189, at *3 (Aug. 6, 2018) (finding irreparable harm where applicant supported his claim with a declaration demonstrating the likely harm to his businesses and customers absent a stay).

57 *Jones*, 2021 WL 396767, at *3 (rejecting contention that applicants would suffer "tremendous and irreparable harm should the bars be enforced pending Commission review" based on argument that "Ms. Jones' livelihood is KJC" and "KJC is Ms. Jones").

above, we normally deem arguments raised for the first time in a reply brief forfeited.[58] In any case, although Allen asserts that once he is no longer registered, re-registration with NYPPEX would be "exceedingly difficult," he does not explain why that would be the case if the Commission ultimately reversed FINRA's denial of the membership continuance application.[59]

A day after the deadline for filing a reply, a group of investors in NYPPEX Holdings filed an affidavit asserting that "Allen is essential to the operation of NYPPEX" and that their "investments in NYPPEX Holdings . . . will be worthless" without Allen's ongoing management. This affidavit is procedurally improper and comes too late.[60] Regardless, the affidavit lacks sufficient detail to assist Allen in demonstrating irreparable harm.[61]

In short, Allen has failed to demonstrate irreparable harm. In any case, even if Allen had made a compelling showing of irreparable harm, his failure to raise a serious legal question on the merits still would preclude granting his stay motion.[62]

C. The risk of harm to others and the public interest support denying a stay.

The third and fourth stay factors—the risk of harm to others from a stay and the public interest—also support denying a stay. Allen contends that there would be "no risk of customer harm" if a stay were granted because (i) the underlying misconduct "did not concern NYPPEX" and there has never been any allegation that any NYPPEX customer has ever suffered harm, and

---

58 *See supra* note 54.

59 *See, e.g.*, *Se. Inv., N.C., Inc.*, Exchange Act Release No. 86097, 2019 WL 2448245, at *5 (June 12, 2019) (finding no irreparable harm based on argument that applicant's career would be destroyed absent a stay of a bar because applicant did not "explain why he would be unable to resume his career if we set aside the bar at the conclusion of his appeal"). To the extent Allen claims irreparable harm from being unable to associate with NYPPEX in the meantime, "the loss of employment income does not necessarily establish irreparable harm—even when the loss is unrecoverable." *Colley v. James*, 254 F. Supp. 3d 45, 69 (D.D.C. 2017).

60 Rule of Practice 210(d)(2), 17 C.F.R. § 201.210(d)(2) (requiring amicus to seek leave and file its submission "within the time allowed the party whose position the amicus will support").

61 *See Jones*, 2021 WL 396767, at *3 (finding no irreparable harm where applicants "submitted no information about KJC's expenses, level of profitability, or exhaustion of available resources that would allow us to assess the degree of harm by not staying the bars").

62 *See, e.g.*, *Lek Sec. Corp.*, Exchange Act Release No. 95014, 2022 WL 1769802, at *8 (May 31, 2022) ("We do not dispute that the cease to act determinations will cause Lek to suffer irreparable harm. But Lek's failure to raise a serious legal question on the merits means Lek has not met its burden for seeking a stay."); *Zipper*, 2017 WL 5712555, at *6 ("Zipper has not satisfied his burden here. As discussed above, he has failed to show that his appeal raises a substantial question on the merits, let alone that he is likely to succeed. And the public interest and risk of harm to others decidedly outweigh any irreparable harm to Dakota.").

(ii) under NYPPEX's business model, it has only a few customers, all of whom are "sophisticated private investors," and the risk of harm to such a customer base is "extraordinarily low." Allen further argues that his otherwise "spotless record" supports a stay.

We do not find Allen's arguments persuasive. Whether or not NYPPEX itself participated in the underlying misconduct, it was the direct recipient of millions of dollars of funds that Allen misappropriated from ACP. Moreover, even if *NYPPEX's* customers suffered no harm, the New York action establishes that Allen has a history of grievously harming investors, specifically the *ACP investors* through his misappropriation and other fraudulent conduct. In any case, we have long held that an inquiry into the public interest "extends beyond the consideration of particular investors to the public-at-large,"[63] and Allen's misconduct demonstrates that he poses a risk to investors generally. Finally, the fact that NYPPEX's investors might all be "sophisticated private investors" does not insulate them from future harm perpetrated by Allen. After all, Allen himself characterizes the ACP investors as "solely . . . 'qualified purchasers' – the most sophisticated investors as defined by federal law."

Finally, we recall that the New York courts found "that Allen engaged in a lengthy and extensive scheme that involved 'a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums of [ACP's] capital and outright fraud.'"[64] Allen cannot challenge these findings here, and they establish knowing and serious violations that created a risk of harm to investors and the market as a whole. For all of these reasons, at this stage of the proceedings, the risk of harm to others and the public interest weigh against a stay.

* * *

Accordingly, IT IS ORDERED that Allen's motion for a stay is denied.

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

Vanessa A. Countryman
Secretary

---

63 *Bradley T. Smith*, Advisers Act Release No. 2604, 2007 WL 1435548, at *8 (May 16, 2007) (internal quotation marks and citation omitted) (rejecting respondent's argument that a bar was unnecessary after a court enjoined him from committing fraud because his customers continued to support him and they and his firm would suffer if the Commission barred him).

64 *NAC Decision*, slip op. at 16 (quoting *Allen*, 2020 WL 554341, at *1).