UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98801 / October 27, 2023

Admin. Proc. File No. 3-20793

In the Matter of the Application of

PAUL RICHARD AQUITANIA

For Review of Action Taken by

FINRA

ORDER DISMISSING PROCEEDING

On March 9, 2022, Paul Richard Aquitania, a client of a FINRA member firm, filed an application for review of an adverse determination made by FINRA. Aquitania sought to challenge a January 25, 2022, FINRA determination that a claim he submitted—related to whether his account with the FINRA member firm had become overdrawn—was ineligible for arbitration.

FINRA subsequently reversed its decision on July 12, 2022, notifying Aquitania that the arbitration case would be "reopened" so that he "may continue to proceed with his claims." But FINRA further informed Aquitania that he needed to amend his claim to clarify how it complied with FINRA Rule 12200, which defines the disputes that must be arbitrated under FINRA's arbitration code. After reopening Aquitania's arbitration proceeding, FINRA moved to dismiss Aquitania's petition for review to the Commission, asserting that its decision to reopen the case and permit Aquitania to proceed with his claim made his application moot. We agree.

Section 19 of the Securities Exchange Act authorizes Commission review of, among other things, any action of a self-regulatory organization like FINRA that "prohibits or limits any person in respect to access to services" offered by the organization.[1] FINRA's determination that Aquitania's claim was ineligible for arbitration in its arbitration forum was a prohibition or limit on access to services that FINRA offers and thus was reviewable under Section 19.[2]

[1] 15 U.S.C. § 78s(d)(1), (2).

[2] *See, e.g.*, *Cynthia Mary Couyoumjian*, Exchange Act Release No. 97179, 2023 WL 2596892, at *2–4 (Mar. 21, 2023) (finding that the Commission has authority to review FINRA's decision that the applicant's claim was ineligible for arbitration).

But Aquitania's appeal became moot when FINRA reversed its decision and provided him the access to its arbitration forum that he had sought through this appeal.[3] "[T]he test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties."[4] Under this test, "we have declined to consider an appeal where even a favorable decision by the Commission would entitle [the applicant] to no relief."[5] Because Aquitania has already obtained the relief that he sought—reversal of FINRA's determination that his claim was ineligible for arbitration—a favorable decision by the Commission would not entitle Aquitania to any further relief.

In his opposition to FINRA's motion, Aquitania does not meaningfully dispute that the matter is now moot. Instead, Aquitania makes various arguments about FINRA's previously granted request to extend the briefing schedule and other claims that do not appear directly relevant to the motion to dismiss.[6]

Nearly a month after he filed his opposition to FINRA's motion to dismiss, Aquitania filed copies of (1) a September 8, 2022, letter from FINRA to Aquitania and (2) his response.[7] In its September 2022 letter, FINRA stated that Aquitania had not adequately responded to its direction to clarify his arbitration claim under Rule 12200 and informed him that, as a result, it had closed his arbitration case without prejudice.[8] In his response, Aquitania suggested that

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[3] *See, e.g., Alpine Secs. Corp.*, Exchange Act Release No. 97347, 2023 WL 3038922, at *1–2 (Apr. 21, 2023) (dismissing review proceeding challenging suspension after FINRA withdrew the suspension); *Paul H. Giles*, Exchange Act Release No. 95349, 2022 WL 2903857, at *1 (July 21, 2022) (dismissing application for review challenging statutory disqualification after FINRA determined that the respondent was no longer subject to the disqualification).

[4] *Marshall Fin., Inc.*, Exchange Act Release No. 50343, 2004 WL 2026518, at *4 (Sept. 10, 2004) (quoting *Coalition for Gov't Procurement v. Fed. Prison Indus., Inc.*, 365 F.3d 435, 458 (6th Cir. 2004)).

[5] *Id.* (internal quotation marks omitted).

[6] *See Paul Richard Aquitania*, Exchange Act Release No. 95396, 2022 WL 3016684 (July 29, 2022) (granting extension). Among other things, for example, Aquitania contends that, in extending the briefing schedule, the Commission incorrectly stated that no prior extensions have occurred. FINRA *had* obtained a previous extension—but of the deadline to file the certified record, not of the briefing schedule, which in any event is irrelevant to FINRA's motion to dismiss. Aquitania also suggests that FINRA is not "ready to accept responsibility," but he does not explain the significance of this claim or how it relates to the motion to dismiss.

[7] Aquitania's faxed response attached various materials previously sent to FINRA or previously filed in this appeal. Aquitania later filed another fax that he sent to FINRA, which attached several pages that he described as "additional material evidence" relating to his claim.

[8] Because FINRA specified that it had closed the case without prejudice, Aquitania may file a new claim that complies with FINRA's rules, including the time limit for filing such a claim under FINRA Rule 12206.

FINRA personnel had acted without justification and that he did not recognize FINRA's decision as binding.[9]

Aquitania fails to explain, however, how either of these letters relates to the action that he is appealing: FINRA's January 2022 determination that his claim was not eligible for arbitration.[10] Nor does Aquitania dispute that FINRA subsequently reversed that decision and granted him access to file a claim. We therefore see no basis for concluding that Aquitania's appeal of that decision should not be dismissed as moot.[11]

It is therefore ORDERED that FINRA's motion to dismiss as moot Paul Richard Aquitania's application for review is hereby granted.

By the Commission.

Vanessa A. Countryman
Secretary

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[9] Aquitania's response included criticisms of FINRA personnel and contended that FINRA's closure of the arbitration case was not binding because the "matter was already preempted under the US Constitution."

[10] *See Bruce Zipper*, Exchange Act Release No. 90737, 2020 WL 7496222, at *17 (Dec. 21, 2020) (holding that pro se applicants waived arguments by not developing the arguments in their briefs on appeal); *Merrimac Corp. Secs., Inc.*, Exchange Act Release No. 86404, 2019 WL 3216542, at *25 & n.158 (July 17, 2019) (declining to address arguments that were not "developed with sufficient clarity" because even "a *pro se* party is not exempted from the requirement to present an argument to avoid waiver"); *cf. FiberTower Spectrum Holdings, LLC v. FCC*, 782 F.3d 692, 696 (D.C. Cir. 2015) (holding that the FCC "need not sift pleadings and documents to identify arguments that are not stated with clarity by a petitioner") (internal quotation marks omitted).

[11] As we have held, that a person may derive "some tangential benefit" from an appeal that has become moot "is not a sufficient justification" for continuing the proceeding. *Kirk A. Knapp*, Exchange Act Release No. 26328, 1988 WL 901516, at *1–2 (Dec. 1, 1988) (holding that an appeal challenging NASD's denial of a firm's application to continue association with a person subject to statutory disqualifications became moot when the firm's NASD membership was cancelled, even though the associated person sought to challenge the validity of the statutory disqualifications).