

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 98821 / October 30, 2023

Admin. Proc. File No. 3-20651

In the Matter of the Application of  
  
MICHELE GRAY  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Customer of FINRA member filed an application for review of an adverse arbitration award. *Held*, application for review is dismissed.

APPEARANCES:

*Michele Gray*, pro se.

*Alan Lawhead, Jennifer Brooks, and Celia L. Passaro* for FINRA.

Appeal filed: October 25, 2021  
Last brief received: December 13, 2021

Michele Gray, a customer of FINRA member Fidelity Brokerage Services LLC (“Fidelity”), initiated an arbitration against the firm in FINRA’s arbitration forum. After receiving an adverse award, Gray filed this application for review with the Commission. We dismiss Gray’s appeal because we lack authority to review it under Section 19(d) of the Securities Exchange Act of 1934.<sup>1</sup>

## I. Background

On or about October 4, 2020, Gray filed a statement of claim in FINRA’s arbitration forum against Fidelity. Gray alleged that Fidelity had improperly and negligently closed her accounts and asserted claims for breach of fiduciary duty, breach of contract, negligence, and intentional infliction of emotional distress. Gray sought to have her accounts reinstated or, alternatively, \$500,000 in compensatory damages and \$1,000,000 in punitive damages. Fidelity denied Gray’s allegations and moved to dismiss the arbitration.

In October 2021, a panel of three arbitrators held an evidentiary hearing. The panel denied Fidelity’s motion to dismiss. And on October 21, 2021, the panel issued an award denying Gray’s claims in their entirety and denying all requested relief.

On October 25, 2021, Gray filed an application for Commission review. FINRA moved to dismiss, arguing that the Commission lacks the authority to review an arbitration award.<sup>2</sup>

## II. Analysis

Section 19(d) authorizes the Commission to review SRO actions that (1) impose any final disciplinary sanction on a member or associated person, (2) deny membership or participation to any applicant, (3) prohibit or limit any person in respect to services offered by the SRO, or (4) bar a person from becoming associated with a member.<sup>3</sup> Gray has not established, nor does she claim, that her appeal falls within any of these categories.<sup>4</sup> Indeed, the Commission has

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<sup>1</sup> See 15 U.S.C. § 78s(d).

<sup>2</sup> In her application for review, Gray stated that her appeal was pursuant to FINRA Rule 9620 and 29 C.F.R. § 4221.9. In referencing Rule 9620, however, Gray quoted from the first sentence of FINRA Rule 9630(a). In her response to FINRA’s motion to dismiss, Gray cited Section 19(d)(2) as the basis for her appeal.

<sup>3</sup> 15 U.S.C. § 78s(d).

<sup>4</sup> See, e.g., *Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 WL 2338414, at \*3–5 (June 3, 2019) (dismissing customer’s appeal from FINRA’s denial of his request to declare his claims ineligible for arbitration because FINRA did not take any action that was reviewable under Section 19(d)); cf. *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at \*3 & n.13 (July 7, 2020) (not reaching “alternate bases for Commission review” where the applicant did not contend that any of those bases applied).

previously held that attempts to appeal the outcome of FINRA arbitration proceedings are not reviewable under Section 19(d).<sup>5</sup>

Instead, Gray argues that the Commission has authority under Section 19(d) to review her appeal because she is allegedly “[a] person aggrieved by final action of FINRA under the Rule 1000 Series.” But we cannot review an SRO action “merely because it adversely affects the applicant.”<sup>6</sup> Moreover, FINRA’s Rule 1000 Series does not apply here. Those rules govern member applications and associated person registrations, and Gray neither applied for FINRA membership nor sought to register as an associated person.

Gray also cites FINRA Rules 9620 and 9630(a) as a reason we can hear her appeal.<sup>7</sup> But those rules also do not apply and, in any event, would not provide a basis for Commission review. Rule 9620 directs FINRA staff to issue a written decision on a FINRA member’s application for exemptive relief under Rule 9610, which allows FINRA members to apply for exemptions from requirements imposed by other FINRA rules. And Rule 9630, in turn, authorizes an applicant to appeal such a decision to FINRA’s National Adjudicatory Council—not to the Commission as Gray has done here. But Gray is not a FINRA member. She did not apply for exemptive relief under Rule 9610 from the requirements of another FINRA rule. And Rule 9630 does not otherwise apply to arbitration awards.

Gray further claims that a regulation, 29 C.F.R. § 4221.9, authorizes our review, but that regulation relates to the arbitration of certain disputes under the Employee Retirement Income

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<sup>5</sup> See *Dustin Tylor Aiguier*, Exchange Act Release No. 88953, 2020 WL 2743938, at \*3 (May 26, 2020) (dismissing application for review of FINRA’s refusal to reopen an arbitration proceeding and explaining that a person who seeks to challenge an arbitration award rendered by a FINRA arbitrator may “move to vacate, modify, or correct the award in court under the Federal Arbitration Act”) (internal quotation marks omitted); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at \*3 (Oct. 22, 2019) (dismissing application for review of FINRA’s “ratification” of an adverse arbitration award by noting, in part, that applicant could have sought “vacatur of the initial award in court”); see also 9 U.S.C. § 10(a) (listing circumstances in which a federal court may vacate an arbitration award). Consistent with these holdings, the cover letter accompanying the panel’s arbitration award advised Gray that she could have challenged the award by moving to vacate, modify, or correct the award in an appropriate court.

<sup>6</sup> *Kincaid*, 2019 WL 5445514, at \*2 (“Action by [an SRO] . . . such as FINRA is not reviewable merely because it adversely affects the applicant. Rather, Exchange Act Section 19(d)(2) governs our [ability] to review SRO action.”) (internal quotation marks and footnotes omitted).

<sup>7</sup> Gray references these rules in her application for review, stating that her application “is pursuant to [FINRA] rule[] 9620” and quoting the first sentence of Rule 9630(a). She does not develop this argument, nor does she reference these rules in her response to FINRA’s motion to dismiss.

Security Act of 1974 (“ERISA”).<sup>8</sup> Gray’s arbitration did not involve ERISA, and therefore the regulation has no bearing on this proceeding. And even if it did, the regulation does not authorize appeals of arbitration awards. Instead, it merely authorizes a party to ask the *arbitrator* to modify or reconsider its award.<sup>9</sup>

For these reasons, we dismiss the application for review.<sup>10</sup> An appropriate order will issue.<sup>11</sup>

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman  
Secretary

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<sup>8</sup> See 29 C.F.R. § 4221.1(a) (explaining that this part of the Code of Federal Regulations “applies to arbitration proceedings initiated pursuant to section 4221 of ERISA”).

<sup>9</sup> 29 C.F.R. § 4221.9(a).

<sup>10</sup> Because we lack the authority to review the arbitration award, we cannot grant the other relief that Gray seeks in this appeal, such as issuance of a subpoena to FINRA. We therefore deny all relief from FINRA that Gray has requested in this appeal. See *Cristo*, 2019 WL 2338414, at \*6 (noting that the applicant needs to establish a basis for Commission review before the Commission can “afford him any relief”); cf. *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 WL 2468111, at \*12 (June 17, 2010) (explaining that Commission review is limited to the application for review and declining to engage in a “broader review” of our oversight of an SRO).

<sup>11</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.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
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MICHELE GRAY  
  
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FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY  
REGISTERED SECURITIES ASSOCIATION

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

ORDERED that this application for review filed by Michele Gray is dismissed.

By the Commission.

Vanessa A. Countryman  
Secretary