

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100189 / May 21, 2024

Admin. Proc. File No. 3-21582

In the Matter of the Application of
THE TRANSPORTATION GROUP
(SECURITIES) LIMITED
For Review of Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Registered securities association expelled firm in an expedited proceeding for failing to file audited annual report. *Held*, application for review is dismissed.

APPEARANCES:

The Transportation Group (Securities) Limited, pro se.

Lisa Jones Toms, for FINRA.

Appeal filed: August 23, 2023
Last brief received: September 8, 2023

The Transportation Group (Securities) Limited (“TTG”), formerly a FINRA-registered capital acquisition broker, seeks review of FINRA expedited action expelling it from FINRA membership pursuant to FINRA Rule 9552. FINRA subsequently moved to dismiss TTG’s application for review, arguing that TTG failed to exhaust its administrative remedies under that rule.¹ As discussed below, we grant FINRA’s motion and dismiss TTG’s appeal.

¹ 15 U.S.C. § 78s(d). FINRA also argues that TTG’s application for review is untimely. But because we dismiss this application due to TTG’s failure to exhaust administrative remedies,

I. Background

On March 16, 2023, FINRA notified TTG that the firm had missed a March 1, 2023 deadline to file its audited annual report for its 2022 fiscal year as required by Exchange Act Rule 17a-3.² FINRA told TTG that if it did not submit the overdue report, the firm would be suspended on April 10, 2023. The letter also informed TTG that it could request a hearing, which would “stay the effectiveness” of the suspension notice.³ FINRA’s letter further informed TTG that, in the event the suspension became effective, the firm could file a written request for termination of the suspension “on the ground of full compliance with the notice of suspension” and that, if it failed to request termination of the suspension within three months of the suspension notice, the firm would be automatically expelled.⁴

TTG took no action to avoid suspension, which occurred on April 10, 2023; nor did it act to prevent the automatic expulsion, which occurred on June 21, 2023. Instead, TTG eventually filed its missing 2022 annual report on July 20, 2023, a month after it had already been expelled. On August 23, 2023, TTG then filed this application for review.

II. Analysis

FINRA argues, and we agree, that dismissal is warranted here because TTG did not exhaust its administrative remedies. As we have repeatedly held, applicants who fail to exhaust such remedies forfeit any future challenge to FINRA’s actions before the Commission.⁵ Such an administrative exhaustion requirement promotes the “efficient resolution” of disputes between FINRA and its members and “is in harmony with Congress’s delegation of authority to SROs to

we do not reach the question of the timeliness of its application. *See Shad Nhebi Clayton*, Exchange Act Release No. 93760, 2021 WL 5907835, at *5 n.23 (Dec. 13, 2021) (finding that, because the applicant “failed to exhaust his administrative remedies,” the Commission need not address whether appeal was untimely).

² 17 C.F.R. § 240.17a-3.

³ *See* FINRA Rule 9552(c) and (e) (“A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing”); *see also* FINRA Rule 9559(c) (“A timely request for a hearing shall stay the effectiveness of a notice issued under [these rules]”).

⁴ *See* FINRA Rule 9552(h) (“A member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred”).

⁵ *Potomac Cap. Mkts., LLC*, Exchange Act Release No. 91172, 2021 WL 666510, at *2 (Feb. 19, 2021); *see also Patrick H. Dowd*, Exchange Act Release No. 83710, 2018 WL 3584177, at *3 (July 25, 2018) (holding that “we will not consider an application for review of FINRA action if that applicant failed to exhaust FINRA’s procedures for contesting the sanction”) (internal quotation marks omitted); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 WL 1683913, at *3 (Apr. 18, 2013) (similar).

settle, in the first instance, disputes relating to their operations.”⁶ Additionally, it “promotes the development of a record in a forum particularly suited to create it, upon which the Commission and, subsequently, the courts can more effectively conduct their review.”⁷ Dismissing TTG’s application furthers those interests here.

FINRA’s pre-suspension letter explained to TTG what the firm needed to do to avoid a suspension, but TTG did not take the required action (i.e., file the missing report or seek a hearing in the matter). The letter also explained that, once TTG was suspended, the firm still had the option of fully complying with the notice of suspension by filing the overdue annual report and requesting termination of the suspension on that basis. But TTG did not do that either. Instead, as noted above, it waited to file the report until a month after FINRA expelled it, and then eventually sought Commission review of its expulsion.

TTG, which did not file an opposition to FINRA’s motion to dismiss, does not dispute that it failed to exhaust its administrative remedies or otherwise oppose FINRA’s motion. TTG has thus waived any arguments against dismissal.⁸ TTG’s application for review makes various claims in defense of its actions.⁹ But FINRA rules required TTG to raise those defenses initially before FINRA by seeking a hearing to challenge the suspension.¹⁰ Doing so would have allowed FINRA, in the first instance, to evaluate the merits of TTG’s position and develop a related record for us to review in evaluating its handling of the matter.¹¹ Given TTG’s failure to avail

⁶ *MFS Sec. Corp. v. SEC*, 380 F.3d 611, 622 (2d Cir. 2004).

⁷ *Id.* at 621.

⁸ *Cf. Canady v. SEC*, 230 F.3d 362, 362-63 (D.C. Cir. 2000) (upholding Commission’s conclusion that respondent “waived [a] defense by failing to argue it”); *Anthony Fields*, Exchange Act Release No. 74344, 2015 WL 728005, at *19 & n.115 (Feb. 20, 2015) (explaining that “arguments for reversal not made in the opening brief” are subject to waiver).

⁹ TTG asserts, among other things, that its 2022 annual audit was due March 31, 2023, rather than March 1, 2023, so it was not due when FINRA sent its suspension notice on March 16, 2023. FINRA disputes this claim. Regardless, if TTG wished to challenge FINRA’s proposed action for this or any other reason, it should have exercised its right to request a hearing before FINRA, as FINRA informed the firm that it could do when FINRA first notified TTG of its impending suspension.

¹⁰ *See, e.g., James K. Merrill*, Exchange Act Release No. 99422, 2024 WL 307172, at *3 (Jan. 24, 2024).

¹¹ *See, e.g., Dowd*, 2018 WL 3584177, at *5 (explaining that, “[i]n bypassing FINRA’s process for explaining his conduct, [applicant] prevented FINRA from considering his defenses and from developing a record from which we could review the merits of those defenses”); *Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 WL 1103694, at *3 (Mar. 24, 2017) (requiring respondent to present merits arguments first to FINRA before raising them on appeal of administrative expulsion); *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 WL 772515, at *5 (Mar. 1, 2013) (rejecting respondent’s attempts to demonstrate compliance with FINRA’s document requests in brief before the Commission where respondent failed to

itself of FINRA's internal procedures to challenge this expedited action in accordance with FINRA's rules, and its subsequent failure to challenge FINRA's motion to dismiss, we find no basis for considering those claims or denying FINRA's motion.

Accordingly, we grant FINRA's motion to dismiss.

An appropriate order will issue.¹²

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

Vanessa A. Countryman
Secretary

request a hearing or termination of suspension pursuant to FINRA rules before seeking Commission review).

¹² 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.

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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 The Transportation Group
(Securities) Limited is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary