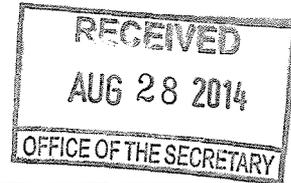


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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**



In the Matter of the Application of

Caryl Trewyn Lenahan

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-15833

**FINRA'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS LENAHAN'S  
APPLICATION FOR REVIEW AND TO STAY BRIEFING SCHEDULE**

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August 27, 2014

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**FINRA'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS LENAHAN'S  
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In its Motion to Dismiss Lenahan's Application for Review and to Stay Brief Schedule, FINRA provided two procedural arguments for dismissing Lenahan's appeal. FINRA first argued that Lenahan failed to exhaust her administrative remedies, and secondly, that Lenahan filed her application for review untimely. In her response to FINRA's Motion to Dismiss, Lenahan does not contest those arguments. In fact, Lenahan concedes that she deliberately ignored FINRA's requests for information, notwithstanding receiving actual notice of her impending bar. Lenahan also admits that her application for review, which was filed nineteen months after the 30-day appeal deadline, is significantly late. None of the reasons in Lenahan's response constitute "extraordinary circumstances" or mitigate her failure to follow FINRA's procedures. For the reasons addressed in this reply, and in FINRA's Motion to Dismiss, the Commission should follow its previous decisions and dismiss this appeal.

**I. LENAHAN ADMITS THAT SHE RECEIVED ACTUAL NOTICE OF HER IMPENDING BAR**

In her response, Lenahan concedes that she received all written requests and notices from FINRA related to her disciplinary proceeding. Lenahan states that she consciously made the decision not to respond because she was “inundated with personal, emotional, and business pressures,” and thus emotionally unable to go through the process of responding to FINRA’s questions.<sup>1</sup> She then points to certain events and occurrences that caused her to decide not to respond to FINRA’s inquiry, including the death of a friend, and unexpected health and financial conditions. As impactful as these events might have been to Lenahan at the time, none of them avail her of exhausting her administrative remedies in a FINRA proceeding.

As addressed more fully in FINRA’s Motion to Dismiss, the Commission has repeatedly held that “[it] will not consider an application for review if the applicant failed to exhaust FINRA’s procedures for contesting the sanction at issue.” *See Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283, at \*8 (Jan. 24, 2014) (dismissing appeal for failure to exhaust FINRA’s administrative remedies); *see also Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at \*11-12 (Apr. 18, 2013) (same). The record reflects that FINRA properly served Lenahan with two written request letters pursuant to Rule 8210, the Pre-Suspension Notice, the Suspension Notice, and the Bar Notice, all of which were mailed, to Lenahan’s address as reflected in the Central Registration Depository

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<sup>1</sup> *See Lenahan’s Addendum to Appeal Application at 1.*

(“CRD”<sup>②</sup>). (RP 1-2, 7-8)<sup>2</sup> Further, Lenahan concedes to receiving all FINRA correspondence sent to her address. It is therefore undisputed that Lenahan had actual knowledge of her impending bar, yet she failed to take corrective action or request a hearing to avoid the disciplinary action taken against her.

FINRA rules make clear Lenahan’s obligations as an associated person of a member to respond to FINRA’s Rule 8210 requests.<sup>3</sup> The letters and notices FINRA sent to Lenahan not only stated her obligation to respond, but warned her of the consequences for failing to respond timely to FINRA’s requests for information. (RP 1-2, 7, 11-12, 19-20, 27-28.) Despite these warnings, Lenahan made an independent decision not to respond in the hopes that her decision would not impact her future endeavors. The additional details regarding her business and personal affairs does not change the effect of her decision. In fact, Lenahan’s response reconfirms that she had no intention on continuing her registration as an association person of a FINRA member.<sup>4</sup> Lenahan’s failure to follow FINRA’s procedures means that she does not qualify for appellate review by the Commission. *See Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at \*6 (May 6, 2010) (finding in a Rule 9552 proceeding that “FINRA’s actions were in accordance with its rules and the purposes of the Exchange Act [when] rules set forth the procedures for suspending and ultimately barring individuals who fail

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<sup>2</sup> “RP\_\_” refers to the page numbers in the certified record filed by FINRA on April 30, 2014.

<sup>3</sup> *See* FINRA Mot. to Dismiss at 9.

<sup>4</sup> Specifically, in her response Lenahan states: “By the December, 2011 conversation with David Suddeth, I was pretty sure I would not activate my license, and his question sealed my decision.” *See* Lenahan’s Addendum to Appeal Application at 2.

to supply requested information or take corrective action”). The Commission should therefore dismiss Lenahan’s appeal for failure to exhaust administrative remedies.

## **II. NO EXTRAORDINARY CIRCUMSTANCES EXIST TO OVERCOME LENAHAN’S LATE APPEAL**

Lenahan also concedes that her appeal is untimely, and therefore the Commission should dismiss this appeal. As provided in FINRA’s motion, a person aggrieved by a final disciplinary sanction imposed by a self-regulatory organization has 30 days to file an appeal or “within such longer period as [the SEC] shall determine.” *See* 15 U.S.C. § 78s(d)(2). An extension for a thirty-day appeal may be granted only upon “a showing of extraordinary circumstances.” *See* 17 C.F.R. §201.420(b); *see also* *Julio C. Ceballos*, Exchange Act Release No. 69020, 2013 SEC LEXIS 641, at \*9-10 (Mar. 1, 2013) (noting that courts have recognized that strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief); *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014, at \*19 (Jun. 17, 2010) (directing the Commission not to extend the 30-day period absent a showing of extraordinary circumstances and that Rule 420(b) is the exclusive remedy for seeking an extension of the 30-day period).

In her submission, Lenahan offers a number of reasons why she decided not to file an appeal until more than a year after her deadline, but none of her reasons meet the “extraordinary circumstances” standard. In *Asensio*, the Commission stated that “the ‘extraordinary circumstances’ exception is to be narrowly construed and applied only in limited circumstances,” for example, where the failure to file timely is beyond the applicant’s control. *Id.* at \*21. Contrary to this standard, however, the timeliness of Lenahan’s appeal was well within her control. She admits to receiving FINRA letters and warnings of her impending bar. Yet,

Lenahan deliberately chose to let her registration expire instead of undergoing the time and expense of challenging her disciplinary proceeding, until nineteen month later.

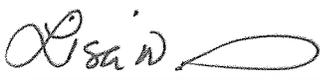
Lenahan's appeal is untimely and the Commission should dismiss it. Lenahan was barred on September 24, 2012. Lenahan's application for review is dated April 4, 2014, which is nineteen months beyond the appeal deadline. No extraordinary circumstances exist to justify the lateness of this appeal. Accordingly, the Commission should follow its previous decisions and dismiss Lenahan's untimely appeal.

**IV. CONCLUSION**

The Commission should dismiss Lenahan's application for review because she failed to exhaust her administrative remedies or, alternatively, because it is untimely.

Respectfully submitted,

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