

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

In the Matter of the Application of
Behnam Halali
For Review of Disciplinary Action Taken by
Financial Industry Regulatory Authority
File No. 3-17610



**FINRA'S MOTION TO DISMISS HALALI'S APPLICATION FOR REVIEW AND
TO STAY BRIEFING SCHEDULE**

Alan Lawhead
Vice President and
Director – Appellate Group

Jennifer Brooks
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8083

October 12, 2016

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**FINRA'S MOTION TO DISMISS HALALI'S APPLICATION FOR REVIEW AND
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I. INTRODUCTION

The Commission should dismiss Behnam Halali's application for review for his failure to exhaust the administrative remedies available to him in FINRA's forum. This case involves Halali's refusal to provide on-the-record testimony in response to FINRA's request for information pursuant to FINRA Rule 8210, and FINRA's subsequent suspension and bar of Halali through an expedited proceeding. After Allstate Financial Services had terminated Halali for cause after learning he had been indicted in connection with a scheme involving fraudulent life insurance policies, Allstate amended Halali's Uniform Termination Notice for Securities Industry Registration ("Form U5") to report a customer complaint. FINRA subsequently opened an investigation to determine whether Halali had violated the federal securities laws or FINRA, NASD, NYSE, or MSRB rules. FINRA sent, and Halali received, successive FINRA Rule 8210 requests for information, to which Halali responded. Halali, however, stopped cooperating with FINRA once his testimony was requested. In the shadow of a criminal indictment, Halali steadfastly refused to provide testimony in FINRA's forum, notwithstanding FINRA's warning

that he could face disciplinary action, including a bar from the securities industry, if he refused to cooperate. FINRA then initiated an expedited proceeding against Halali, informing him that he would be suspended if he did not take corrective action or request a hearing before June 20, 2016. Halali again refused to cooperate and FINRA suspended him. FINRA notified Halali that he could request termination of the suspension on the ground that he complied with FINRA's request for testimony. But Halali never provided the requested testimony (or requested a hearing) and FINRA barred him. Halali then filed this appeal.

Halali's application for review should be dismissed because he failed to follow FINRA's procedures. Halali disregarded the directives in numerous notices from FINRA and did not take corrective action by providing testimony, did not request a hearing, and did not request termination of the suspension before FINRA barred him. Thus, Halali failed to exhaust his administrative remedies, and the record before the Commission contains no valid grounds for an appeal. The Commission should find that Halali failed to avail himself of FINRA's procedures and dismiss Halali's application for review.¹

II. FACTUAL BACKGROUND

In December 2014, Allstate Financial Services ("Allstate") fired Halali. (RP 111.)² Allstate terminated Halali after receiving notice that he was a named defendant in "a criminal complaint containing allegations of wire fraud, money laundering, and aggregated identity theft

¹ Pursuant to Commission Rule of Practice 161, FINRA requests that the Commission stay issuance of a briefing schedule in this matter while this motion is pending. The Commission should first evaluate the dispositive argument that Halali's appeal should be dismissed on procedural grounds before it reaches the underlying substance of this appeal.

² "RP" refers to the page numbers in the certified record of this case filed with the Commission.

in connection with a scheme to defraud a financial institution.” (RP 111); *see also* <https://www.justice.gov/usao-ndca/pr/five-defendants-charged-fraudulent-life-insurance-policies-scheme> (announcing indictment of Halali). In October 2015, Allstate filed an amendment to Halali’s Form U5 disclosing a customer complaint. (RP 121-22, 127.) Allstate reported that one of Halali’s former customers alleged that “the fees associated with the policy were not disclosed to him and [the customer] is disappointed in the performance of the policy.” (RP 122, 128.) FINRA subsequently initiated an investigation into whether Halali violated the federal securities laws or FINRA, NASD, NYSE, or MSRB rules. (RP 35-37.)

A. FINRA’s Preliminary Investigation of Halali

On October 23, 2015, Michael Malden, a FINRA investigator, sent Halali a letter requesting information pursuant to FINRA Rule 8210.³ (RP 1-2.) The letter sought information concerning the customer complaint described in the October 2015 Form U5 amendment. (RP 1.) Halali responded to this request for information. (RP 3-5.)

On February 2, 2016, Malden, pursuant to Rule 8210, sent Halali a second request for information, which included the October 23, 2015 request and sought additional information. (RP 7-11.) Halali also responded to this request for information. (RP 13-14.)

On April 28, 2016, Malden notified Halali that FINRA’s Preliminary Investigations Unit within the Central Review Group had completed its review of the customer complaint reported in the October 2015 Form U5 amendment and was referring the matter to FINRA’s Department of Enforcement. (RP 15.)

³ FINRA Rule 8210 grants FINRA the right to require members and persons subject to FINRA’s jurisdiction “to provide information orally, in writing, or electronically . . . with respect to any matter involved” in an investigation, complaint, examination or proceeding. FINRA Rule 8210(a)(1).

B. FINRA's Request for Halali's Testimony and the Rule 9552 Proceedings Against Halali

1. The May 17, 2016 Request for Testimony

On May 12, 2016, Edwin Aradi, Senior Counsel in Enforcement, informed Halali's attorney, Ali Moghaddami, that, as part of FINRA's investigation of Halali, FINRA intended to take the on-the-record testimony of Halali. (RP 18.) Moghaddami subsequently informed Aradi that Halali would not make himself available for testimony. (RP 21.) On May 17, 2016, Aradi requested in writing pursuant to FINRA Rule 8210 for Halali to appear at FINRA's San Francisco District Office on June 6, 2016, and have FINRA take Halali's testimony. (RP 35-37.) Aradi sent the letter to Halali's counsel, Moghaddami, by certified and electronic mail.⁴ (RP 35-39.) Moghaddami, on behalf of Halali, represented to Aradi in email correspondence on May 17, 2016, and May 23, 2016, that Halali would not appear for testimony scheduled on June 6, 2016, and would not appear on any other date. (RP 41, 47.) Moghaddami refused in his May 23, 2016 email: "I have received your correspondence of 5-17-2016 in the mail as well. For all the reasons I previously stated, my client **WILL NOT APPEAR on June 6, 2016**, or any other date set by you for his interrogation." (RP 47.) Given Halali's refusal to testify pursuant to FINRA Rule 8210, Enforcement initiated efforts to suspend Halali.

2. The May 27, 2016 Pre-Suspension Notice

After Halali refused to provide testimony, Enforcement sought to suspend him from associating with any FINRA member firm pursuant to FINRA Rule 9552.⁵ (RP 81-93.) On May

⁴ The certified mailing was delivered on May 23, 2016. (RP 39.)

⁵ FINRA Rule 9552(a) states that

[Footnote cont'd on next page]

27, 2016. Aradi sent Halali a letter (the “Pre-Suspension Notice”) notifying him that FINRA planned to suspend Halali from associating with any member firm in any capacity on June 20, 2016, for his failure to provide testimony in response to the May 17, 2016 request.⁶ (RP 90-91.) The Pre-Suspension Notice stated that Halali could avoid imposition of the suspension if he took corrective action by complying with the request for testimony before the suspension date of June 20, 2016. (RP 90.) The Pre-Suspension Notice explained that Halali had the opportunity to request a hearing before the suspension date of June 20, 2016, and that such a request would stay the effectiveness of the suspension. (RP 90-91.) The Pre-Suspension Notice also explained that, if Halali was suspended, he could seek termination of the suspension on the ground of full compliance with the Pre-Suspension Notice, and that if he failed to do so within three months of the issuance of the Pre-Suspension Notice, FINRA would automatically bar him from associating with any FINRA member in any capacity on September 1, 2016. (RP 90-91); *see also* FINRA Rule 9552(h).⁷

[cont’d]

[i]f a member, person associated with a member or person subject to FINRA’s jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules, . . . FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

⁶ Aradi sent the Pre-Suspension Notice to Halali in care of Moghaddami, who agreed to accept service on behalf of Halali. (RP 55, 71.) The Pre-Suspension Notice also included a copy of the May 17, 2016 request for testimony. (RP 92-93.)

⁷ FINRA Rule 9552(h) states, “[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.”

FINRA sent the Pre-Suspension Notice to Moghaddami by certified, first-class, and electronic mail. (RP 81, 90, 94-96.) None of the mailings were returned. The tracking information for the certified mailing documents shows that the letter was delivered on May 31, 2016. (RP 95-96.) Halali did not respond to the Pre-Suspension Notice, nor did he respond to FINRA's outstanding request for testimony.

3. The June 20, 2016 Suspension Notice

On June 20, 2016, David Camuzo, a Director in Enforcement, notified Halali in a letter (the "Suspension Notice") in care of Moghaddami that Halali was suspended, effective immediately, from association with any FINRA member firm in any capacity pursuant to FINRA Rule 9552. (RP 98.) The Suspension Notice stated that Halali was suspended, in accordance with the Pre-Suspension Notice, because he had failed to provide the requested testimony and failed to take corrective action by June 20, 2016. (RP 98.) The Suspension Notice advised Halali that he could file a written request for termination of the suspension on grounds of full compliance with the Pre-Suspension Notice. (RP 98.) The Suspension Notice reiterated the warning that Halali's failure to request termination of the suspension within three months of the date of the Pre-Suspension Notice would result in FINRA imposing an automatic bar from associating with any FINRA member firm in any capacity on September 1, 2016, pursuant to FINRA Rule 9552(h). (RP 98.)

FINRA sent the Suspension Notice to Halali's counsel by certified, first-class, and electronic mail. (RP 97-100.) None of the mailings were returned. Shipment details for the certified mailing document that the letter was delivered on June 25, 2016. (RP 99-100.)

4. The September 1, 2016 Bar Notice

In the three months following the Pre-Suspension Notice, Halali and his counsel did not request termination of the suspension. Accordingly, on September 1, 2016, Jasmine K. Shergill, Senior Attorney with Enforcement, notified Halali through his counsel that, effective immediately, he was barred from associating with any FINRA member in any capacity (the “Bar Notice”). (RP 101-02.) The Bar Notice stated that the bar was imposed pursuant to FINRA Rule 9552(h) and in accordance with the Pre-Suspension Notice and the Suspension Notice. (RP 101.)

FINRA sent the Bar Notice by certified and first-class mail to Halali in care of Moghaddami.⁸ (RP 101-03.) None of the mailings were returned to FINRA. The certified mailing was delivered on September 6, 2016. (RP 103.)

On September 30, 2016, Halali submitted an application for review of this matter to the Commission. (RP 105.)

III. ARGUMENT

The Commission should dismiss Halali’s application for review because he failed to exhaust his administrative remedies under FINRA Rules 9552 and 9559 by providing the requested testimony pursuant to Rule 8210, requesting a hearing, or requesting the termination of his suspension before the bar became effective. Halali does not dispute the bases of FINRA’s actions. Halali through his counsel received notice of these proceedings, but Halali took no action until he was barred. Halali thus failed to exhaust his administrative remedies.

⁸ FINRA was unable to verify that the Bar Notice was sent to Halali’s counsel by electronic mail.

A. Halali Failed to Exhaust His Administrative Remedies

The Commission is precluded from considering Halali's application for review because he failed to follow FINRA procedures, and consequently, failed to exhaust his administrative remedies. As the Commission has emphasized, "[i]t is clearly proper to require that a statutory right to review be exercised in an orderly fashion, and to specify procedural steps which must be observed as a condition to securing review." *Ricky D. Mullins*, Exchange Act Release No. 71926, 2014 SEC LEXIS 1268, at *9 (Apr. 10, 2014) (citation omitted). The Commission has repeatedly held that requiring respondents to exhaust their administrative remedies before FINRA is necessary to FINRA's important regulatory functions, promotes development of the record, allows FINRA the opportunity to correct its own errors prior to Commission review, and promotes the efficient resolution of disciplinary disputes between FINRA and its members. *See, e.g., Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 SEC LEXIS 3503, at *6-7 (Sept. 19, 2014); *Mullins*, 2014 SEC LEXIS 1268, at *10 (same).

As an aggrieved party, Halali was required to exhaust his administrative remedies before resorting to an appeal. *See Gregory S. Profeta*, Exchange Act Release No. 62055, 2010 SEC LEXIS 1563, at *5 (May 6, 2010) (explaining that the Commission "will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue"). Those who fail to exercise their rights to administrative review cannot claim that they have exhausted their administrative remedies. *Royal Sec. Corp.*, 36 S.E.C. 275, 277 n.3 (1955).

The precedent with respect to FINRA Rule 9552 expedited proceedings is well-settled, and the Commission has consistently dismissed respondents' applications for review where respondents failed to exhaust their administrative remedies under FINRA Rule 9552. *See, e.g.,*

Li-Lin Hsu, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585, at *6-14 (Sept. 21, 2016) (dismissing applicant's appeal for failure to exhaust administrative remedies where FINRA barred applicant under FINRA Rule 9552 for failing to respond to FINRA Rule 8210 requests); *Rogelio Guevara*, Exchange Act Release No. 78134, 2016 SEC LEXIS 2233, at *9-11 (June 22, 2016) (same); *Marcos A. Santana*, Exchange Act Release No. 74138, 2015 SEC LEXIS 312, at *8-11 (Jan. 26, 2015) (same); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at *7-8 (Dec. 4, 2014) (same); *Mullins*, 2014 SEC LEXIS 1268, at *12-13 (same); *Mark Steven Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283, at *9-13 (Jan. 24, 2014) (same); *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *11-15 (Apr. 18, 2013) (same).

The record establishes that Halali has affirmatively refused to provide on-the-record testimony before FINRA and did not respond to FINRA's notices until after he was barred. These included the May 17, 2016 request for testimony pursuant to FINRA Rule 8210 and the notices required under FINRA Rule 9552. By refusing to testify in contravention of FINRA's request under Rule 8210 and disregarding the directions set forth in FINRA Rule 9552, the Pre-Suspension Notice, and the Suspension Notice, Halali is precluded from challenging FINRA's action before the Commission. *See, e.g., Mullins*, 2014 SEC LEXIS 1268, at *12-13 (relying on "well-established precedent" when dismissing an application for review in a FINRA Rule 9552 proceeding where applicant failed to request a hearing or take corrective action in FINRA's forum); *Steckler*, 2014 SEC LEXIS 283, at *8 (same); *Profeta*, 2010 SEC LEXIS 1563, at *6 (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 to supply requested information or take corrective action”).

Halali could have prevented the suspension and subsequent bar by providing on-the-record testimony, requesting a hearing timely, or contesting the suspension during the three-month suspension period on the grounds that he fully complied with the Rule 8210 request for testimony, as detailed in the Pre-Suspension Notice. (RP 90.) He took none of these steps. Instead, Halali filed this appeal with the Commission.⁹ Halali does not dispute the bases for FINRA’s action—that he had notice of the Rule 8210 request for testimony and failed to provide that testimony, request a hearing timely to contest his impending suspension, or request termination of his suspension before he was barred. Halali’s failure to follow FINRA’s procedure and his failure to offer any testimony means that he does not qualify for appellate review by the Commission. *See Guevara*, 2016 SEC LEXIS 2233, at *10. The Commission, accordingly, should dismiss the application for review.

B. FINRA Provided Halali with Proper Notice of These Proceedings

Halali does not deny receiving any of the FINRA notices. First, FINRA sent the May 17, 2016 request for testimony issued pursuant to Rule 8210 to Halali’s counsel, Moghaddami, who FINRA staff knew was representing Halali in the matter that was the subject of the Rule 8210 notice. (RP 18, 35-37.) FINRA Rule 8210(d) provides that a notice under FINRA Rule 8210 “shall be deemed received” by a “the person” when FINRA staff serves the notice on counsel who is representing “the person . . . regarding the investigation, complaint, examination, or

⁹ Even now, Halali makes no representations that he will testify before FINRA and states only that he is appealing. (RP 105.)

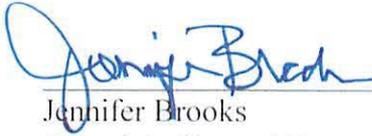
proceeding that is the subject of the notice.” Accordingly, FINRA properly served the May 17, 2016 request for testimony, and Halali is deemed to have received it.

Second, on May 27, 2016, Aradi emailed Moghaddami to confirm that he would continue to accept service on behalf of Halali, and specifically for service of the “notice of suspension if [Halali] refuses to appear for testimony.” (RP 55, 71.) Moghaddami responded that same day stating: “On advise [sic] of counsel, He will not be there at the Spanish Inquisition type fishing expedition you outlined, as I think I have told you several times now. Send me whatever you wish to waste your time and mine on.” (RP 71.) Service of notices in expedited proceedings such as this one is governed by FINRA Rule 9552(b). Rule 9552(b) provides that FINRA staff shall serve the person with notice of suspension “(or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email.” FINRA accordingly served Halali in care of Moghaddami with the Pre-Suspension, Suspension, and Bar notices. (RP 81, 90, 94-95, 97, 98, 99, 101, 103.) The record demonstrates that FINRA complied with its rules, and Halali received proper notice of these proceedings against him.

IV. CONCLUSION

Halali refused to provide testimony in response to FINRA’s request for information, he did not request a hearing, and consequently, was suspended. Halali further failed to request termination of his suspension. Consequently, Halali was barred in accordance with FINRA’s rules. Halali failed to exhaust his administrative remedies. Accordingly, the Commission should dismiss Halali’s application for review.

Respectfully submitted,



Jennifer Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

October 12, 2016

CERTIFICATE OF SERVICE

I, Jennifer Brooks, certify that on this 12th day of October 2016, I caused a copy of FINRA's Motion to Dismiss the Application for Review and to Stay the Briefing Schedule, in the matter of Application for Review of Behnam Halali, Administrative Proceeding No. 3-17610, to be served by messenger on:

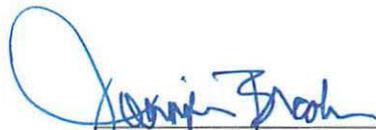
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

and via FedEx and certified mail on:

Behnam Halali
[REDACTED]
San Jose, CA [REDACTED]

Behnam Halali
[REDACTED]
Morgan Hill, CA [REDACTED]

Service was made on the Commission by messenger and on the Applicant by FedEx and certified mail due to the distance between the office of FINRA and the Applicant.



Jennifer Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083



Financial Industry Regulatory Authority

HARD COPY

Jennifer Brooks
Associate General Counsel

Direct: (202) 728-8083
Fax: (202) 728-8264

October 12, 2016

VIA MESSENGER

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090



RE: In the Matter of the Application for Review of Behnam Halali
Administrative Proceeding No. 3-17610

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Motion to Dismiss Halali's Application for Review and to Stay Briefing Schedule in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer Brooks

Enclosures

cc: Behnam Halali (via FedEx and certified mail)
4901 Rue Calais
San Jose, CA 95136

and

Behnam Halali (via FedEx and certified mail)
[REDACTED]
Morgan Hill, CA [REDACTED]