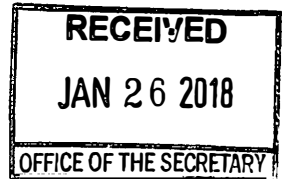


HARD COPY

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC



In the Matter of the Application of
The Association of Bruce Zipper
With Dakota Securities International, Inc.
For Review of Denial of Registration by
FINRA
File No. 3-18256

FINRA'S OPPOSITION TO APPLICANT'S SECOND MOTION FOR STAY

On November 27, 2017, the Commission denied applicant Bruce Zipper's request to stay a FINRA decision denying his firm's statutory disqualification application.¹ The Commission found that Zipper did not demonstrate that the extraordinary remedy of permitting him to continue to work at his firm while this appeal remained pending was warranted. Specifically, the Commission found that, among other things, Zipper had "not even raised a substantial question on the merits, let alone shown a strong likelihood of success." Order Denying Stay, at 5. Moreover, the Commission found that "any relief staying FINRA's denial of the MC-400 application while the Commission considers Zipper's appeal could endanger investors." Order Denying Stay, at 8.

¹ See *Bruce Zipper*, Exchange Act Release No. 82158 (Nov. 27, 2017) (Order Denying Stay), <https://www.sec.gov/litigation/opinions/2017/34-82158.pdf> (hereinafter "Order Denying Stay"). The parties subsequently completed briefing on the merits of this appeal.

In a filing dated January 13, 2018, Zipper again requests that the Commission grant a stay to permit him to associate with his firm while this appeal is pending.² In support of this latest request, Zipper points to his appeal of the underlying settlement that resulted in his statutory disqualification (which the Commission dismissed).³ Specifically, Zipper relies upon the Commission's subsequent order in that proceeding—that the parties submit additional written materials in connection with Zipper's request for reconsideration of the dismissal—as the sole basis to grant him the extraordinary relief that he seeks.⁴ He argues that the Commission's request for additional information shows that there is “a good likelihood that [he] will prevail.”

Zipper's request is not authorized and his arguments are without merit. The SEC's Rules of Practice do not allow a *second* motion to stay an SRO action. Rule of Practice 401(d)(1) authorizes an aggrieved party to make a motion for a stay. There is no rule provision for a *second, third, or fourth* motion for a stay. The Commission should deny Zipper's second request for a stay as unavailable.⁵

² The undersigned did not receive Zipper's second request for a stay (which does not include a certificate of service) until January 22, 2018.

³ See *Bruce Zipper*, Exchange Act Release No. 81788 (Sept. 29, 2017), <https://www.sec.gov/litigation/opinions/2017/34-81788.pdf>.

⁴ See *Bruce Zipper*, Exchange Act Release No. 82486 (Jan. 11, 2018) (Order Requesting Additional Written Submissions), <https://www.sec.gov/litigation/opinions/2018/34-82486.pdf>. The parties' additional written submissions in connection with that proceeding (File No. 3-17963) are due in the next several weeks.

⁵ Further, to the extent that Zipper requests reconsideration of the Commission's original Order Denying Stay, he has failed to show that such relief is appropriate. See *Richard A. Neaton*, Exchange Act Release No. 65863, 2011 SEC LEXIS 4232, at *2 (Dec. 1, 2011) (Order Denying Motion for Reconsideration) (“The exceptional remedy of a motion for reconsideration is designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence.”) (referencing Commission Rule of Practice 470).

Moreover, contrary to Zipper's claim, the fact that the Commission has ordered the parties to submit additional written materials in connection with Zipper's motion to reconsider does not show that he has a strong likelihood of prevailing on the merits of the current appeal (which is a crucial element that an applicant must generally show to obtain a stay). *See* Order Denying Stay, at 4-5, 8-9. Indeed, to find otherwise would elevate an applicant's motion to reconsider (and any requests for information related to that motion) to a completely unwarranted level of significance, and incentivize applicants of FINRA decisions to initiate contemporaneous additional litigation with the Commission to obtain stays. Likewise, the Commission's request for additional information does not, by itself, demonstrate that Zipper has raised a substantial question on the merits of this appeal. *See id.* This is particularly true where Zipper has produced no new evidence to support his claims on appeal; contrary to what Zipper states in his second stay request, the Commission's request for additional information does not constitute evidence in support of his appeal.⁶

Finally, much like his first request for a stay, Zipper does not address the remaining factors that the Commission considers in determining whether to grant a stay, such as the public interest and the risk of harm to others. The Commission's previous finding—that these other factors “tip decidedly against granting a stay”—remains equally true today as it was two months ago. *See* Order Denying Stay, at 7. Permitting Zipper to associate with his firm pending this

⁶ Zipper's stay request states, without any support, that “[t]here is no dispute” that FINRA staff told him the day after he signed his settlement agreement that “there were NO options for me to appeal” (which facts he suggests will require the Commission to vacate the underlying settlement). Although these matters will be resolved in the context of the Commission's request for additional information in the other proceeding, FINRA strongly disagrees with these claims in their entirety.

appeal without any protections of FINRA's membership process would put the investing public at risk, and Zipper has simply not shown that such drastic relief is warranted.

In short, the only thing that has changed since the Commission denied Zipper's first request for a stay is that the Commission ordered the parties to file additional materials in connection with Zipper's motion for reconsideration, in his related but separate proceeding. This fact alone does not, and cannot, support Zipper's renewed request to associate with his firm while this appeal remains pending. Consequently, FINRA urges the Commission to deny Zipper's second stay request.

Respectfully submitted,

 /SCT

Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281

January 25, 2018

CERTIFICATE OF SERVICE

I, Andrew Love, certify that on this 25th day of January 2018, I caused a copy of the foregoing FINRA's Opposition to Applicant's Second Stay Request to be served by messenger on:

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5400

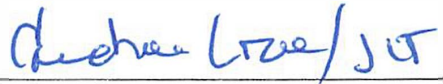
On this date, I also caused a copy of the opposition to be served via overnight FedEx and electronic mail on:

Bruce Zipper

██████████
Miami, FL ██████████

██████████@gmail.com

Different methods of service were used because courier service could not be provided to Mr. Zipper.



Andrew Love
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8281



Financial Industry Regulatory Authority



Andrew Love
Associate General Counsel

Direct: (202) 728-8281
Fax: (202) 728-8264

January 25, 2018

VIA MESSENGER

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

RE: In the Matter of the Application of Bruce Zipper
Administrative Proceeding No. 3-18256

Dear Mr. Fields:

Enclosed please find the original and three copies of FINRA's Brief in Opposition To Applicant's Second Motion For Stay in the above-captioned matter.

Please contact me at (202) 728-8281 if you have any questions.

Very truly yours,


Andrew Love

cc: Bruce Zipper
Brennan Love