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

In the Matter of the Application of

Patrick H. Dowd

For Review of Disciplinary Action Taken by

Financial Industry Regulatory Authority

File No. 3-18283



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

Alan Lawhead
Vice President and
Director – Appellate Group

Andrew Love
Associate General Counsel

Megan Rauch
Assistant General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8863

November 28, 2017

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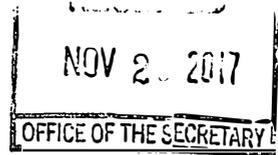


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I. INTRODUCTION

Patrick Hugh Dowd failed to exhaust his administrative remedies in FINRA's forum and failed to timely appeal FINRA's action against him. The Commission should therefore dismiss his application for review.

Dowd cannot invoke the Commission's appellate jurisdiction when he did not make arguments in opposition to FINRA's actions before a FINRA adjudicator. Dowd acknowledges that he received FINRA's initial request for information, yet he nonetheless failed to respond to FINRA's questions concerning his termination for submitting annuity applications to his firm with inaccurate information and false electronic signatures. Notwithstanding FINRA's warning that Dowd would be suspended and eventually barred unless he complied with the requests for information, Dowd refused to cooperate and to provide the requested information. Dowd ignored FINRA's numerous notices and did not take any action to contest FINRA's impending bar. Despite proper notice throughout in accordance with FINRA rules, Dowd failed to avail

himself of the remedies available to him to contest his suspension and impending bar and, thus, failed to exhaust his administrative remedies.

Second, Dowd's application for review is untimely. Dowd filed his application for review on November 7, 2017—more than seven months after FINRA notified him that he was barred from associating with any FINRA member and more than six months after his time to appeal to the Commission had lapsed. Commission rules provide that an aggrieved person applying for review must file an application within 30 days after receiving notice of a determination by FINRA. Dowd neither timely filed its application for review, nor made the required showing of “extraordinary circumstances” sufficient to justify an extension of his time to file.

Based on Dowd's failure to exhaust his administrative remedies and untimely application for review, the Commission should follow its well-established precedent and dismiss Dowd's application for review.¹

II. FACTUAL BACKGROUND

Dowd is not currently associated with a FINRA member. (RP 51.)² He was last associated with Pruco Securities, LLC (“Pruco”) from August 10, 1990 to July 26, 2016. (RP 51.) FINRA's Central Registration Depository (“CRD”[®]) provides that Pruco discharged Dowd because he “submitted multiple annuity applications containing inaccurate information and

¹ FINRA requests, pursuant to Commission Rule of Practice 161, that the Commission stay briefing in this matter while this motion is pending. *See* 17 C.F.R. § 201.161. The Commission should first evaluate the dispositive argument that Dowd's appeal should be dismissed for failure to exhaust administrative remedies and untimeliness before it reaches the underlying substance of this appeal.

² “RP ___” refers to the page numbers in the certified record filed by FINRA on November 28, 2017.

alleged electronic signatures of clients who denied making them. The annuity contracts were not issued when funds were not received by [Pruco], resulting in [Dowd's] receipt of commissions to which he was not otherwise entitled.” (RP 51.)

A. The August 11, 2016 Request for Information

On August 11, 2016, Kevin O'Brien, a FINRA principal examiner, sent Dowd a letter requesting information pursuant to FINRA Rule 8210.³ (RP 1-4.) The letter informed Dowd that FINRA was conducting an inquiry with respect to the Uniform Termination Notice for Securities Industry Registration (“Form U5”) filed by Pruco that Dowd was terminated for submitting multiple annuity applications containing inaccurate information and falsified client signatures. (RP 1-2.) The letter sought from Dowd: (1) a signed statement to FINRA about these allegations; (2) an explanation as to why he submitted applications that were not electronically signed by his clients; (3) copies of all documents relating to the allegations; and (4) a statement about whether there were any other complaints regarding his employment at Pruco, either open or resolved in the past three years, and a description and supporting documentation of the such complaints. (RP 1.) The letter asked Dowd to respond no later than August 25, 2016. (RP 1.) It warned Dowd that, pursuant to FINRA Rule 8210, “[a]ny failure on [Dowd's] part to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry.” (RP 2.)

³ FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide documents and written information to FINRA with respect to any matter involved in an investigation. The rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.” *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). A person who fails to respond to a request issued under FINRA Rule 8210 impedes FINRA's ability to detect misconduct and protect the investing public. *Id.* at *13-14.

FINRA sent the letter by certified and first-class mail to Dowd's address of record contained in CRD, 695 A1A N #116, Ponte Verde Beach, FL, 32082 (the "CRD Address"). (RP 1, 3-5, 45, 47.) Dowd did not respond to the request for information.

B. The September 8, 2016 Request for Information

On September 8, 2016, FINRA examiner O'Brien made a second written request to Dowd pursuant to FINRA Rule 8210 for the information. (RP 7-12.) The second request asked Dowd to answer FINRA's questions set forth in the August 11, 2016 request and included a copy of that request. (RP 7-9.) The September 8 letter warned Dowd that his failure to respond could subject him to "disciplinary action." (RP 7.) O'Brien sent the letter to Dowd by certified and first-class mail to the CRD Address and set a response deadline of September 22, 2016. (RP 7, 10-12, 45, 47.) Again, Dowd did not respond to the FINRA Rule 8210 request.

C. The December 22, 2016 Pre-Suspension Notice

Given Dowd's silence, FINRA's Department of Enforcement ("Enforcement") initiated efforts to suspend Dowd. Enforcement sought to compel a response from Dowd by bringing an expedited proceeding that could result in FINRA suspending him from associating with any FINRA member. *See* RP 15-16; FINRA Rule 9552.⁴ On December 22, 2016, Jasmine Shergill, a Senior Enforcement Attorney, warned Dowd in a letter (the "Pre-Suspension Notice") that

⁴ FINRA Rule 9552(a) states that

[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, or fails to keep its membership application or supporting documents current, 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.

FINRA planned to suspend him on January 17, 2017, for his failure to respond to the prior FINRA Rule 8210 requests for information. (RP 15-19.)

The Pre-Suspension Notice stated that Dowd could avoid imposition of the suspension if he took corrective action by complying with the FINRA Rule 8210 requests for information before January 17, 2017. (RP 15.) The Pre-Suspension Notice further explained that Dowd could request a hearing to contest the imposition of the suspension, and could seek termination of the suspension if he complied fully with the outstanding FINRA Rule 8210 requests. (RP 15-16.) The Pre-Suspension Notice stressed that Dowd he failed to request termination of the suspension within three months, he would be in default, and barred, on March 27, 2017. *See* RP 16); FINRA Rule 9552(h).⁵

FINRA sent the Pre-Suspension Notice to the CRD Address by certified and first-class mail.⁶ (RP 15, 20-21, 45, 47.) Dowd did not respond to the Pre-Suspension Notice or answer FINRA's outstanding FINRA Rule 8210 requests.

D. The January 17, 2017 Suspension Notice

Because Dowd failed to take any action in response to the Pre-Suspension Notice, on January 17, 2017, Shergill notified Dowd in a letter (the "Suspension Notice") that he was suspended, effective immediately, from association with any FINRA member firm in any capacity. (RP 25.) The Suspension Notice advised Dowd that he could file a written request to terminate the suspension based on fully providing the information and documents FINRA

⁵ 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."

⁶ Prior to mailing the Pre-Suspension Notice, FINRA staff searched a comprehensive public records database in LexisNexis to determine Dowd's current mailing address, which FINRA staff determined was the CRD address. (RP 13-15, 47.)

requested pursuant to FINRA Rule 8210, and reiterated the warning that Dowd's failure to seek relief from the suspension by March 27, 2017, would result in a default and an automatic bar pursuant to FINRA Rule 9552. (RP 25.)

FINRA sent the Suspension Notice to the CRD Address by certified and first-class mail.⁷ (RP 25-27, 45, 47.) Dowd did not respond to the Suspension Notice.

E. The March 27, 2017 Bar Notice

In the three months following the Pre-Suspension Notice, Dowd did not communicate with FINRA or challenge his suspension. Accordingly, on March 27, 2017, Shergill notified Dowd that, effective immediately, he was in default and barred (the "Bar Notice"). (RP 31-32.) The Bar Notice cautioned Dowd that if he wanted to seek review of FINRA's decision, he must file an application for review with the Commission within 30 days of receiving it. (RP 31.)

FINRA sent the Bar Notice to the CRD Address by certified and first-class mail.⁸ (RP 31, 33-34, 45, 47.)

⁷ Prior to mailing the Suspension Notice, FINRA staff again searched a comprehensive public records database in LexisNexis to determine Dowd's current mailing address, which FINRA staff determined was the CRD address. (RP 23-24, 47.)

⁸ Prior to mailing the Bar Notice, FINRA staff again searched a comprehensive public records database in LexisNexis to determine Dowd's current mailing address, which FINRA staff determined was the CRD address. (RP 29-30, 47.) The certified mailing of the Bar Notice was returned as unclaimed; the first-class mailing was not returned. (RP 35-37.)

F. Dowd's November 7, 2017 Application for Review

On November 7, 2017, more than seven months after FINRA mailed the Bar Notice, Dowd submitted an application for review of this matter to the Commission. (RP 39-41.)

III. ARGUMENT

The Commission should dismiss Dowd's application for review because Dowd failed to exhaust his administrative remedies by providing the requested information to FINRA or requesting a hearing and because Dowd's application for review is untimely. Despite receiving notice of these proceedings in accordance with FINRA rules, Dowd ignored numerous letters and notices from FINRA, failed to follow FINRA procedures to challenge his suspension, and defaulted. Then, after receiving FINRA's decision that he had been barred from associating with any FINRA member, he ignored the deadline to seek Commission review of FINRA's final action and instead waited more than seven months to file his application. Dowd does not provide any basis in his application for review that would excuse his failure to exhaust his administrative remedies or his untimeliness. The Commission should therefore dismiss this appeal.

A. FINRA Provided Dowd With Proper Notice of These Proceedings

FINRA properly served Dowd with the FINRA Rule 8210 requests, Pre-Suspension Notice, Suspension Notice, and Bar Notice. (RP 1-5, 7-13, 15-21, 25-27, 31-34.) Dowd does not deny receiving FINRA's requests for information or any of the FINRA notices, and even acknowledges his receipt of the Bar Notice and August 11, 2016 request for information in his application for review.⁹ (RP 39-40.)

⁹ As of the November 20, 2017, CRD still reflected that Dowd's current address is the CRD Address, to which all correspondence was mailed in this matter. (RP 45, 47.)

In any event, Dowd is deemed to have received all FINRA correspondence sent to the “last known residential address,” as reflected in FINRA records. *See* FINRA Rule 8210(d) (providing that any request for information “shall be deemed received” when it is transmitted to the “last known residential address of the person as reflected in the Central Registration Depository”). Similarly, FINRA Rule 9134(b)(1) provides that, “[p]apers served on a natural person may be served at the natural person’s residential address, as reflected in the [CRD], if applicable.”

It is undisputed that FINRA sent all correspondence to Dowd at his CRD Address. (RP 1-5, 7-13, 15-21, 25-27, 31-34, 45, 47.) Therefore, the record demonstrates that FINRA complied with the applicable rules and properly served Dowd by sending all correspondence to the CRD Address. *See, e.g., Mark S. Steckler*, Exchange Act Release No. 71391, 2014 SEC LEXIS 283, at *10-11 (Jan. 24, 2014) (finding that the 8210 requests were deemed to have been received by applicant, regardless of whether he had actual receipt, when FINRA properly served him at his CRD address); *Gilbert T. Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *4 n.6 (Apr. 18, 2013) (stating that a “notice issued pursuant to Rule 8210 is deemed received by such person when mailed to the individual’s last known CRD address”).

B. Dowd Failed to Exhaust His Administrative Remedies

The Commission is precluded from considering Dowd’s application for review because he failed to follow FINRA procedures to challenge his suspension and, thus, failed to exhaust his administrative remedies. An aggrieved party—such as Dowd—is required to exhaust his administrative remedies before resorting to an appeal. The precedent in this area is well settled. *See, e.g., Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 SEC LEXIS 1403, at *11-18 (May 9, 2017) (dismissing applicant’s appeal for failure to exhaust administrative

remedies where FINRA barred applicant under 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); *Gerald J. Lodovico*, Exchange Act Release No. 73748, 2014 SEC LEXIS 4732, at *7-8 (Dec. 4, 2014) (same). 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 *10 (Apr. 10, 2014) (citing *Royal Sec. Corp.*, 36 S.E.C. 275 (1955)).

Dowd failed repeatedly to pursue his administrative remedies to prevent or challenge his suspension. Dowd does not deny receiving FINRA’s requests for information or any of the FINRA notices. (RP 39.) Dowd even acknowledges receiving FINRA’s August 11, 2016 request for information, in which he was informed that a failure to respond could result in a bar. (RP 2, 39). But despite knowing that his failure to respond to the FINRA Rule 8210 requests could result in serious sanctions, Dowd chose not to respond. (RP 2, 7.) After issuance of the Pre-Suspension Notice, Dowd had the opportunity to take corrective action by complying with the FINRA Rule 8210 requests or, alternatively, to request a hearing and set forth the reasons why he believed his suspension should be set aside. (RP 15-16.) But Dowd did not take corrective action or request a hearing. After issuance of the Suspension Notice, Dowd had the opportunity to move for reinstatement. (RP 25.) Again, Dowd did nothing. Accordingly, pursuant to FINRA Rule 9552(h), Dowd was barred. (RP 31-32.)

In his application for review, Dowd, while acknowledging that he received the August 11, 2016 request for information and Bar Notice, attempts to explain why he failed to provide the requested information to FINRA. (RP 39-40.) But Dowd’s excuses are irrelevant for purposes

of the Commission's consideration of his application for review. The issue before the Commission is not Dowd's underlying misconduct—i.e., his failure to respond to the FINRA Rule 8210 requests. Rather, the issue before the Commission is whether Dowd failed to follow FINRA procedures to challenge his suspension, and consequently, forfeited his ability to challenge FINRA's actions before the Commission.

Here, it is undisputed that Dowd did not follow the required procedural steps as a condition of applying for Commission review. Dowd had notice of FINRA's requests for information, the consequences of failing to respond to those requests, the suspension that was entered, the means of challenging the suspension, and the consequences of not challenging the suspension. Dowd could have previously provided the information at issue, requested a hearing, or contested the suspension during the three-month suspension period. He took none of these steps. By repeatedly failing to respond to the FINRA Rule 8210 requests for information and disregarding the directions set forth in the Pre-Suspension and Suspension Notices, Dowd failed to exhaust his administrative remedies and lost the ability to challenge FINRA's actions in this appeal. *See, e.g., Mullins*, 2014 SEC LEXIS 1268, at *13-14 (relying on "well-established precedent" when dismissing 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); *Martinez*, 2013 SEC LEXIS 1147, at *15 (same).

C. Dowd's Application for Review is Untimely

Dowd's untimely filing of his application for review provides an independent basis for dismissing his appeal. Section 19(d)(2) of the Securities Exchange Act of 1934 provides that any person aggrieved by a FINRA decision appealable to the Commission must file an application for review with the Commission "within thirty days after the date" that notice of the decision

“was filed with [the Commission] and received by such aggrieved person, or within such longer period as [the Commission] may determine.” 15 U.S.C. § 78s(d)(2). Commission Rule of Practice 420 is the “exclusive remedy” for seeking an extension of the 30-day appeal period. 17 C.F.R. § 201.420(b). That rule provides that the Commission “will not extend this 30-day period, absent a showing of extraordinary circumstances.” *Id.* The Commission has stated that “extraordinary circumstances” exist where the “applicant’s failure timely to file was beyond the control of the applicant.” *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014, at *21 (June 17, 2010), *aff’d*, 447 F. App’x 984 (11th Cir. 2011).

Dowd did not file his application for review by the deadline for doing so, and he has not demonstrated extraordinary circumstances necessary to extend the deadline. FINRA sent the Bar Notice to Dowd by certified and first-class mail on March 27, 2017. (RP 31.) The Bar Notice cautioned Dowd that if he wanted to seek review of FINRA’s decision, he must file an application for review with the Commission within 30 days of receiving it. (RP 31.) Instead, Dowd did not file his application for review until November 7, 2017—more than six months after the deadline for doing so expired. (RP 39.) Dowd never sought an extension of the filing deadline.

In his application for review, Dowd acknowledges receiving the Bar Notice, but provides no justification for his untimely filing, much less a showing of “extraordinary circumstances.” (RP 39.) The Commission routinely rejects applications for review in which the applicant did not act promptly to pursue his appeal. *See, e.g., McBarron Capital LLC*, Exchange Act Release No. 81785, 2017 SEC LEXIS 3112, at *7 (Sep. 29, 2017) (dismissing an untimely application for review where applicant never sought an extension of the time to file and provided no explanation for his late filing); *Jones*, 2017 SEC LEXIS 1403, at *18-20 (same); *Aliza Manzella*,

Exchange Act Release No. 77084, 2016 SEC LEXIS 464 (Feb. 8, 2016) (dismissing an untimely application for review where applicant never sought an extension). “As [the Commission has] repeatedly observed, ‘strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.’ Unmet deadlines may cut off substantive rights to review, but this is their function.” *McBarron*, 2017 SEC LEXIS 3112, at *7 (quoting *Manzella*, 2016 SEC LEXIS 464, at *17). Based on these facts and established precedent, the Commission should dismiss Dowd’s application for review as untimely.

IV. CONCLUSION

Dowd failed to respond to FINRA Rule 8210 requests for information, and consistent with FINRA rules, was suspended. Dowd then ignored numerous FINRA notices and failed to avail himself of FINRA administrative procedures to terminate the suspension. As a result, Dowd defaulted, and was barred. At each step, Dowd received notice of these proceedings, but chose to do nothing. Then Dowd failed timely to file his application for review with the Commission and failed to establish extraordinary circumstances sufficient to justify an extension of time to submit an appeal. Based on his failure to exhaust his administrative remedies and his failure to timely appeal FINRA’s decision, the Commission should dismiss Dowd’s application for review.

Respectfully submitted,

By:

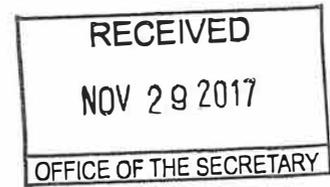


Megan Rauch, Esq.
FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006

November 28, 2017



HARD COPY



Megan Rauch
Assistant General Counsel

Direct: (202) 728-8863
Fax: (202) 728-8264

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VIA MESSENGER

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

RE: In the Matter of the Application of Patrick H. Dowd,
Administrative Proceeding No. 3-18283

Mr. Fields:

Enclosed please find a corrected table of contents (and three copies) for FINRA's Motion to Dismiss Dowd's Application for Review and To Stay Briefing Schedule for the above-referenced matter. The original table of contents filed earlier today did not reference all of the corresponding page numbers in the brief.

I apologize for the inconvenience. Please contact me at (202) 728-8863 if you have any questions.

Sincerely,

Megan Rauch

cc: James C. Poindexter, Esq. (by email and FedEx)
T.A. Delegal, III, Esq. (by email and FedEx)

Enclosure