

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65345 / September 16, 2011

Admin. Proc. File No. 3-14442

In the Matter of the Application of

NORMAN CHEN

For Review of Disciplinary Action Taken by

FINRA

ORDER GRANTING
MOTION TO DISMISS
APPLICATION FOR
REVIEW

I.

On June 27, 2011, Norman Chen ("Chen"), a former associated person of FINRA member firm Chase Investment Services Corp. ("Chase"), filed an application for review of disciplinary action taken by the Financial Industry Regulatory Authority, Inc. ("FINRA"), barring him from associating in any capacity with a FINRA member. On July 13, 2011, FINRA filed a motion to dismiss Chen's application for review based on his "fail[ure] to follow FINRA procedures" to contest the imposed sanction and, thus, "exhaust his administrative remedies." Chen has not submitted an opposition to FINRA's motion to dismiss.

For the reasons set forth below, we have determined to grant FINRA's motion to dismiss Chen's application for review.

II.

On September 13, 2010, Chase filed a Form U5 Uniform Termination Notice for Securities Registration ("Form U5"), disclosing it had terminated Chen's employment on August 11, 2010. As Chase explained in the Form U5, it "discharged" Chen after determining by internal review that he had "opened a credit card for an employee who was not eligible for the specific card" and "falsified a bank client[']s [identification] in order to open a bank account."

FINRA subsequently began an investigation into whether Chen had violated the securities laws or FINRA rules. On September 17, 2010, FINRA sent Chen a letter (the "First Letter"), pursuant to FINRA Rule 8210,¹ requesting information regarding the alleged wrongdoing that led to his dismissal from Chase, including a signed statement from Chen addressing the allegations. The First Letter asked for Chen's response by October 1, 2010. FINRA sent the First Letter, as well as all subsequent letters, to Chen's "last known residential address" as reflected in the Central Registration Depository (the "CRD").² Chen did not respond to the First Letter.

On January 14, 2011, FINRA sent Chen a second letter (the "Second Letter"), pursuant to FINRA Rule 8210, requesting the same information that it had requested in the First Letter. The Second Letter, which FINRA sent by certified and first-class mailing to Chen's CRD address, asked for Chen's response by January 28, 2011. A return receipt, signed by "Norman Chen," showed that the Second Letter was delivered on January 22, 2011. Chen, again, did not respond.

On February 23, 2011, FINRA sent Chen a third letter (the "Third Letter"), notifying him that, pursuant to FINRA Rule 9552(a),³ he would be suspended on March 21, 2011, if he failed to take "corrective action" by providing FINRA with the information requested in its previous two letters. The Third Letter informed Chen of his right to request a hearing in this matter before March 21, 2011, pursuant to FINRA Rule 9552(e), and that "[a] timely request for hearing would stay the effective date of any suspension." An express mail receipt showed delivery of the Third Letter on February 24, 2011.

On March 21, 2011, FINRA sent Chen a fourth letter (the "Fourth Letter"), notifying him that he was suspended, effective that date. The Fourth Letter informed Chen that he would be automatically barred from associating with a FINRA member in any capacity on May 26, 2011, pursuant to FINRA Rule 9552(h), if he did not provide the requested information and request termination of his suspension by May 23, 2011. An express mail receipt showed delivery of the Fourth Letter on March 22, 2011.

¹ FINRA Rule 8210 requires individuals associated with a FINRA member firm to provide information upon request with respect to any matter involved in an investigation.

² FINRA Rule 8210(d) (stating notice "shall be deemed received" by mailing to the person's "last known residential address . . . in [CRD]"); *see also* NASD Notice to Members 97-31 (reminding registered persons to keep a current mailing address with NASD "[f]or at least two years *after* an individual has been terminated by the filing of . . . [a] Form U5" (emphasis in original)).

³ FINRA Rule 9552(a) permits FINRA to suspend the association of an individual with a FINRA member firm upon twenty-one days' notice if such individual does not provide FINRA with information requested pursuant to FINRA's rules.

The record includes an undated letter from Chen, requesting a hearing in the matter. Although FINRA's letter on February 23, 2011, had clearly directed that any such request should be sent to FINRA's Office of Hearing Officers, with an address provided, Chen's letter was written to John Rahmer, FINRA's investigator who sent the First and Second Letters. Chen's letter was marked with a "received" stamp, dated March 24, 2011, but it is unclear which FINRA office stamped it. In addition to his request for hearing, Chen's letter stated that he "felt that [he] was fired from Chase unjustly" and that he "was hurried and harassed into answering" questions from Chase personnel.

On March 28, 2011, FINRA's Office of Hearing Officers denied Chen's request for a hearing because it was untimely. The Office of Hearing Officers further informed Chen of his right, pursuant to FINRA Rule 9552(f), to "file a written request for termination of [his] suspension on the ground of full compliance" with FINRA's information requests. An express mail receipt showed delivery of the Office of Hearing Officers' letter on March 29, 2011.

In a letter dated May 22, 2011, a day before the deadline, Chen requested that FINRA "lift [his] suspension . . . under Procedural Rule 9552(f)." In the three-paragraph letter, Chen apologized for his "immature behavior . . . [which] delayed this process and jeopardized [his] chances of reinstating [his] Licences." Chen "promise[d] to be in full compliance[,] . . . punctual with all matters moving forward." Chen's letter, however, did not include the information requested by FINRA in its previous letters, including his response to allegations in the Form U5 of wrongdoing.

On May 26, 2011, FINRA barred Chen, pursuant to Rule 9552(h), from associating in any capacity with a FINRA member firm based on his failure to comply with its information requests.⁴ On June 1, 2011, FINRA denied Chen's May 22 request to lift his then-suspension. In the letter, FINRA recounted the multiple letters it had sent Chen since September 2010 and stated that Chen had yet to "provide FINRA with the information requested in the staff's letters," as required by Rule 9552(f) to terminate a suspension. Chen filed a timely application for review.

⁴ The record is unclear whether FINRA was in receipt of Chen's May 22 letter when it barred him on May 26, as the order did not address Chen's request to lift the suspension.

III.

We have consistently held that "we will not consider an application for review if the applicant failed to exhaust FINRA's procedures for contesting the sanction at issue."⁵ As we have stressed, "[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."⁶

FINRA's actions, here, were in accordance with its rules and the purposes of the Exchange Act. FINRA Rule 9552 sets forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action. Rule 9552 "promote[s] a reasonable, fair and efficient disciplinary process," which is consistent with the Exchange Act's purpose, among others, of "prevent[ing] fraudulent and manipulative acts and practices," through appropriate disciplinary action.⁷ We have stated that "[t]he failure to respond to [FINRA] information requests frustrates [FINRA]'s ability to detect misconduct, and such inability in turn threatens investors and markets."⁸ In accordance with its rules, FINRA notified Chen in several letters to him that he would be suspended and automatically barred if he failed to either respond to FINRA's inquiry into allegations of wrongdoing or timely request a hearing to contest his impending sanction. Chen failed to respond to FINRA's inquiry or timely request a hearing. As a result, Chen's bar was imposed automatically pursuant to FINRA rules.

In his application for review, Chen does not dispute the specific grounds on which FINRA based its action – *i.e.*, that he failed to respond to FINRA's information requests or timely request a hearing to contest his impending sanction – exist in fact. His only response to FINRA was contained in his untimely request for a hearing, explaining – without addressing the

⁵ *Gregory S. Profeta*, Securities Exchange Act Rel. No. 62055 (May 6, 2010), 98 SEC Docket 28074, 2876; *see also Jeffrey A. King*, 58 S.E.C. 839, 843 (2005); *Lee Gura*, 57 S.E.C. 972, 976 (2004); *Gary A. Fox*, 55 S.E.C. 1147, 1149-50 (2002).

⁶ *Id.* (quoting *Royal Sec. Corp.*, 36 S.E.C. 275, 277 (1955)); *see also Swirsky v. NASD*, 124 F.3d 59, 62 (1st Cir. 1997) ("agree[ing] with other circuits that have considered the question" and concluding that the doctrine of exhaustion of administrative remedies applies to NASD disciplinary actions (collecting cases)).

⁷ *Order Approving Rule Change*, Exchange Act Rel. No. 61242 (Dec. 28, 2009) (shortening the time period before a suspension automatically becomes a bar from six to three months); *see also Order Approving Proposed Rule*, Exchange Act Rel. No. 43102 (Aug. 1, 2000), 72 SEC Docket 2976, 2981 (stating in adopting predecessor to Rule 9552 that it provides "appropriate discipline of members who fail to provide [FINRA] with certain information").

⁸ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656 (Apr. 11, 2008), 93 SEC Docket 5122, 5127 (citation omitted), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

substance of the Form U5's allegations – that he felt "hurried and harassed into answering" Chase's questions. When FINRA instructed him of his right to request termination of his then-suspension "on the grounds of full compliance" with FINRA's information request, Chen's response was again insufficient, consisting of an apology and a promise of full compliance, but failing to address the allegations of his wrongdoing disclosed in the Form U5.

In his application for review, Chen claims that he "sent numerous letters to FINRA abiding by the rules as much as I could for hearings and the appeal process," a claim not supported by the record. He further "promise[s] to work diligently and timely in trying to comply [with] all regulations set forth by both the SEC and FINRA." To date, however, Chen has not responded to FINRA's motion to dismiss.

Chen has not asserted, nor does the record show, any justification for his failure to comply with FINRA's information requests or follow FINRA's procedures to contest the action. Rather, the record shows a pattern of unresponsiveness and delay in Chen's interactions with FINRA throughout the proceedings below. Chen failed to respond to FINRA's September 2010 and January 2011 information requests. His request for a hearing was untimely. Even his letter on May 22, 2011, while promising his "full compliance" with all matters, again failed to respond to FINRA's original requests for information – which by then had been outstanding for over nine months. Under the circumstances, we view Chen's conduct "amounted to a complete failure to respond and [FINRA] acted consistently with the purposes of the Exchange Act in imposing the bar" against him.⁹

Accordingly, it is ORDERED that FINRA's motion to dismiss the application for review filed by Norman Chen be, and it hereby is, GRANTED.¹⁰

By the Commission.

Elizabeth M. Murphy
Secretary

⁹ *Elliot M. Hershberg*, 58 S.E.C. 1184, 1191-92 (2006) (finding applicant's conduct "amounted to a complete failure to respond," despite a "belated offer to testify" "fourteen months after [FINRA's] initial request"), *aff'd*, 210 F. App'x 125 (2d Cir. 2006) (unpublished).

¹⁰ We have considered all of the parties' contentions. We have rejected or sustained them to the extent they are inconsistent or in accord with the views expressed herein.