

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 71972 / April 18, 2014

Admin. Proc. File No. 3-15735

In the Matter of

ROBERT D. TUCKER

for Review of Disciplinary Action Taken by

FINRA

ORDER DISMISSING REVIEW APPLICATION

On January 28, 2014, Robert D. Tucker filed an application for review of a FINRA disciplinary action, finding that Tucker improperly transferred customer funds to his personal bank account and thereafter converted those funds for his own personal use, in violation of NASD Rule 2330 and FINRA Rule 2010.¹ FINRA barred Tucker from associating with any FINRA member firm and assessed costs. On February 19, pursuant to Commission Rule of Practice 450, the Commission issued a scheduling order, stating that Tucker's brief in support of his application was due on March 21. The Commission's scheduling order further stated that, pursuant to Rule of Practice 180(c),² Tucker's "failure to file a brief in support of the application may result in dismissal of this review proceeding." To date, Tucker has not filed a brief.

On April 2, 2014, FINRA filed a motion to dismiss Tucker's application for his failure to file a supporting brief. Under Rule of Practice 154(b), Tucker had five days to respond to FINRA's motion.³ When Tucker failed to respond to FINRA's motion or otherwise file his brief, the Commission's Office of the Secretary sent Tucker a letter on April 10 that summarized Tucker's

¹ NASD Rule 2330 (prohibiting any "member or person associated with a member . . . from mak[ing] use of a customer's securities or funds"); FINRA Rule 2010 (requiring members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade").

² 17 C.F.R. § 201.180(c).

³ 17 C.F.R. § 201.154(b).

failures to file required papers in his appeal as of the date of the letter.⁴ The Secretary's office further warned Tucker, "if our office does not receive your brief by close of official business on Tuesday, April 15, your application for review is at risk of being dismissed."

On April 15, Tucker filed an uncaptioned, two-page letter with the Secretary's office in which Tucker states that "[a]s a pro se individual please allow this correspondence as my application for review thus avoiding Rule [180(c)] of the [Commission's] Rules of . . . practice." Tucker states that the "[r]ecord is filled with inaccurate assertions," although Tucker does not cite to any specific assertions. He also claims that "[a] FINRA witness . . . unquestionably fabricated events to the likings of the FINRA panel and thus prejudicing [FINRA's National Adjudicatory Council]." Tucker does not provide further explanation or support for this claim. He states only that it his "desire to examine the entire Record" and requests that his "application for review be accepted," even though the Commission already had accepted his application on February 19.

Commission Rule of Practice 450(b) addresses the content for briefs required to be filed in an appeal before the Commission.⁵ Among other requirements, Rule 450(b) states that "briefs shall be confined to the particular matters at issue. Each exception to findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record . . . and by concise argument including citation of such statutes, decisions, and other authorities as may be relevant."⁶ In addressing deficient filings, the Commission has stated that "[p]arties, including those appearing *pro se*, are obligated to familiarize themselves with the Rules of Practices"⁷ and "[t]he fact that a person may represent himself . . . may be a factor in considering how to address a deficient filing, but should not, standing alone, be determinative."⁷

Tucker's April 15 letter cannot be read to meet any of the Rule 450(b) requirements. He cites no exceptions to FINRA's findings or conclusions, he provides no citations to the record, and he does not include any arguments. Tucker's references to "inaccurate assertions" and "fabricated events" in the record are vague and he provides no further explanation, support, or suggestion of what these may be. His letter also does not appear to respond to FINRA's motion to dismiss. Although he expresses his "desire to examine the entire Record," Tucker does not claim he was denied an opportunity to review the record during the FINRA proceeding below or during the period provided him in our scheduling order for preparation of his brief.

⁴ The Secretary's office sent the letter to Tucker by e-mail and certified mail on April 10. The Secretary's office read the contents of the letter to Tucker during a phone call on April 10, and Tucker responded by e-mail on April 11 to the e-mail transmission of the letter.

⁵ 17 C.F.R. § 201.450(b).

⁶ *Id.*

⁷ *Stonegate Sec., Inc.*, Securities Exchange Act Rel. No. 42720, 2000 WL 485196, (Apr. 25, 2000) (quoting 60 Fed. Reg. at 32,754).

Thus, we construe Tucker's letter to be a request for an open-ended, and unsubstantiated,⁸ extension of time to file his brief, which is already twenty-eight days overdue. As stated in the Commission's February 19 scheduling order, under Rule 180(c) of the Rules of Practice, failure to make a required filing of a brief or cure a deficient filing is ground for dismissal.⁹ Given Tucker's failure to file a supporting brief in this matter and failure to respond to a dispositive motion by FINRA, it is appropriate that the review proceeding be dismissed.¹⁰

Accordingly, it is ORDERED that the application for review filed by Robert D. Tucker is dismissed.

For the Commission by the Office of the General Counsel pursuant to delegated authority.

Jill M. Peterson
Assistant Secretary

⁸ See generally Rule of Practice 161(b) (setting forth considerations in determining whether to grant extensions of time); 17 C.F.R. § 201.161(b).

⁹ 17 C.F.R. § 201.180(c).

¹⁰ See *Steven Neil Barbot*, Order Dismissing Application, Exchange Act Rel. No. 69263, 2013 WL 1290210, at *1 (Apr. 1, 2013) (dismissing FINRA appeal for failure to file supporting brief, as stated in the Commission's scheduling order); *Kent D. Sweat*, Order Dismissing Review Application, Admin. Proc. File No. 3-14317 (June 10, 2011) (same); cf. *Apollo Publ'n Corp.*, Order Dismissing Review Proceeding and Notice of Finality, Securities Act Rel. No. 8678, 2006 WL 985307, at *1 (Apr. 13, 2006) (dismissing appeal of initial decision on similar ground).