

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80662 / May 11, 2017

Admin. Proc. File No. 3-17767

In the Matter of the Application of MCBARRON CAPITAL LLC For Review of Action Taken by FINRA
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ORDER TO SHOW CAUSE WHY PROCEEDING SHOULD BE REOPENED

On April 20, 2017, we issued an order dismissing McBarron Capital LLC's application for review of FINRA action.¹ The same day, our Office of the Secretary received from McBarron a filing that appears to be an untimely response to FINRA's motion to dismiss. We order McBarron to show cause as to why this review proceeding should be reopened.

Background

On December 8, 2016, a FINRA hearing officer issued a decision cancelling McBarron's membership with FINRA after the firm failed to pay outstanding fees owed to FINRA.² The hearing officer also rejected McBarron's request for a hearing because it was untimely and did not set forth any and all defenses for its failure to pay. FINRA's National Adjudicatory Council did not call the decision for review, and the decision became the final action of FINRA.

On January 3, 2017, McBarron filed an application for review with the Commission. Our Office of the Secretary received it on January 10, 2017. Acting pursuant to delegated authority and Rule of Practice 411,³ our Office of the General Counsel issued an order granting the application for review on February 24, 2017. That order directed McBarron to file its opening brief in support of the application for review by March 27, 2017. The order also reminded

¹ See *McBarron Capital LLC*, Exchange Act Release No. 80499, 2017 WL 1406911 (Apr. 20, 2017) (order dismissing review proceeding).

² *McBarron Capital LLC*, FINRA Expedited Proceeding No. DFC160001, STAR No. 20160521585 (Dec. 8, 2016), available at https://www.finra.org/sites/default/files/OHO_McBarron_DFC160001_120816_0.pdf.

³ 17 C.F.R. § 201.411.

McBarron that, pursuant to Rule of Practice 180(c),⁴ “failure to file a brief in support of the application may result in dismissal of this review proceeding.”

McBarron did not timely file its opening brief. On April 3, 2017, FINRA filed a motion to dismiss McBarron’s application for review due to McBarron’s failure to file. McBarron had five days to respond to FINRA’s motion under Rule of Practice 154(b),⁵ but did not do so.

For these reasons, in an order dated April 20, 2017, our Office of the General Counsel concluded that “[i]t appears that McBarron has abandoned its appeal,” and ordered pursuant to delegated authority that McBarron’s application for review be dismissed.⁶

The same day as that order was issued, the Office of the Secretary received a filing from McBarron that referenced “FINRA Administrative Proceeding 3-17767,” an apparent reference to this proceeding. Its filing attached a copy of FINRA’s motion to dismiss filed on April 3. But McBarron’s filing did not otherwise address FINRA’s motion. Instead, it repeated verbatim a numbered list identified as “grounds for the appeal” that it had included in its January 3 application for review. McBarron’s list of issues presented on appeal is not, and does not purport to be, an opening brief that satisfies the requirements of our Rule 450(b), which specifies the contents of briefs in review proceedings before the Commission.⁷

Analysis

Our Rule of Practice 180(c) contemplates that failure to file a brief in support of an application may result in dismissal of the review proceeding.⁸ And the briefing schedule in this

⁴ 17 C.F.R. § 201.180(c).

⁵ 17 C.F.R. § 201.154(b).

⁶ *McBarron Capital LLC*, 2017 WL 1406911 at *1; *see* 17 C.F.R. § 200.30-14(g)(4) (delegating authority to the Commission’s General Counsel to “determine whether an application for review” of SRO proceedings “has been abandoned, . . . and accordingly to issue an order dismissing the application”); 17 C.F.R. 201.431(b) (providing that a party to an action made pursuant to delegated authority may seek Commission review of that action by filing a notice of intention to petition for review within five days after service of notice of the action).

⁷ *See, e.g.*, 17 C.F.R. § 201.450(b) (stating that “[e]ach exception to the findings or conclusions being reviewed shall be stated succinctly” and “supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including such statutes, decisions and other authorities as may be relevant”).

⁸ 17 C.F.R. § 201.180(c) (providing, among other things, that the Commission may dismiss “one or more claims” by a person in a proceeding before the Commission if the person fails to make a filing required under the Rules); *see also Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 78319, 81 Fed. Reg. 50212, 50219 (July 29, 2016)

(continued...)

case reminded McBarron that the proceeding could be dismissed pursuant to Rule 180(c) if it failed to file its opening brief. The order dismissing McBarron's application for review was issued in accordance with Rule 180(c) after McBarron failed to file its opening brief or respond to FINRA's motion to dismiss following McBarron's failure to do so.

We are not aware of any case in which we have reopened a proceeding after it has been dismissed for the failure to file an opening brief.⁹ Nonetheless, McBarron's April 20, 2017 filing suggests that it wishes to pursue an appeal of FINRA's action cancelling its membership.

Under the circumstances, we exercise our discretion to provide McBarron an opportunity to show cause why this review proceeding should be reopened. If McBarron seeks to reopen the review proceeding, it must file a response to this order by May 25, 2017. The response must be no more than ten double-spaced pages in length and must address the following issues:¹⁰

- why McBarron failed to file its opening brief or an opposition to FINRA's motion to dismiss; and
- what good cause exists for vacating the April 20 order dismissing the review proceeding and allowing McBarron to file an untimely opening brief.¹¹

Accordingly, it is ORDERED that if McBarron Capital LLC seeks to reopen this proceeding it must file a response to this order by May 25, 2017.

By the Commission.

Brent J. Fields
Secretary

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(explaining that substitution of "the phrase 'one or more claims' for the [previous] phrase 'the case'" was "not intended to, and do[es] not, change the substance of the Rule").

⁹ Cf. *Michael Pino*, Exchange Act Release No. 74903, 2015 WL 2125692, at *1 n.2 (May 7, 2015) (exercising our discretion to accept a late-filed brief after FINRA filed a motion to dismiss the application for review, but before the motion was granted, where the applicant "asserted that he had mailed the brief on time, but it was returned to him due to insufficient postage, and that he planned to re-submit the brief (which he subsequently did)").

¹⁰ McBarron's response must adhere to Rules of Practice 150 – 153, 17 C.F.R. §§ 201.150-.153.

¹¹ Cf. 17 C.F.R. 201.155(b) (stating, in the context of a motion to set aside a default, that the motion must "state the reasons for the failure to appear or defend" and "specify the nature of the proposed defense," and that the Commission may set aside the default "for good cause shown").