

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 82202 / December 1, 2017

Admin. Proc. File No. 3-18108

In the Matter of the Application of  
  
KENNETH JOSEPH KOLQUIST  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Registered securities association barred individual in an expedited proceeding for failing to respond to requests for information. *Held*, application for review is dismissed.

APPEARANCES:

*Kenneth Joseph Kolquist*, pro se.

*Alan Lawhead* and *Celia L. Passaro*, for FINRA.

Appeal filed: August 1, 2017

Last brief received: October 4, 2017

Kenneth J. Kolquist, formerly an associated person of a FINRA member firm, seeks review of FINRA action barring him from association with any FINRA member firm for failing to respond to its requests for information. The briefing schedule in this matter ordered the parties to identify the basis for Commission review and address the timeliness of the application. In its response, FINRA moved to dismiss Kolquist's application for review on the grounds that he sought relief under a rule that does not apply to his application and his application was untimely. Kolquist did not file a brief or an opposition to FINRA's motion. For the reasons explained below, we grant FINRA's motion to dismiss Kolquist's application for review.

## I. Background

### A. FINRA requested information from Kolquist in connection with his termination.

Kolquist joined the securities industry when he registered with FINRA as an investment company products/variable contracts representative in 2005. On October 21, 2015, Kolquist's firm terminated him, and on November 6, 2015, filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") in connection with his termination. The Form U5 indicated that Kolquist had been "terminated for violation of [f]irm policy including failure to disclose liens, failure to forward a client complaint and failure to timely forward client checks."

FINRA then commenced an investigation. On March 23, 2016, FINRA sent Kolquist a letter requesting, pursuant to FINRA Rule 8210, that he provide specified documents and information to FINRA by April 6, 2016.<sup>1</sup> The letter informed Kolquist of his obligation to respond and warned that "[a]ny failure . . . to satisfy these obligations could expose [him] to sanctions, including a permanent bar from the securities industry." FINRA sent the letter by certified and first-class mail to Kolquist's address of record in its Central Registration Depository ("CRD") system.<sup>2</sup> The certified mailing was returned to FINRA unclaimed, but the first-class mailing was not returned to FINRA. Kolquist did not respond.

On April 6, 2016, FINRA sent Kolquist a second letter pursuant to FINRA Rule 8210, setting a new deadline for a response of April 20, 2016 and enclosing a copy of the March 23

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<sup>1</sup> See FINRA Rule 8210(a) (requiring persons subject to FINRA's jurisdiction to provide testimony, information, or documents in connection with FINRA investigations); FINRA By-laws, Article V, Section 4(a)(i) (stating that FINRA's jurisdiction over an associated person continues for two years after the person ceases to be registered with FINRA, and that the person "shall continue to be subject to the filing of a complaint" based upon "such person's failure . . . to provide information requested by" FINRA while subject to its jurisdiction); *cf. Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at \*6 (Nov. 8, 2007) (stating that because FINRA lacks subpoena power Rule 8210 is "vitaly important").

<sup>2</sup> See Investor Publication, *Protect Your Money: Check Out Brokers and Investment Advisers* ("The Central Registration Depository (CRD) is a computerized database that contains information about most brokers, their representatives, and the firms they work for."), available at <http://www.sec.gov/investor/brokers.htm>; see also FINRA Rule 8210(d) (deeming a formerly registered person to have "received" notice of a mailing if FINRA sent it to the person's "last known residential address . . . as reflected in the [CRD]"); *NASD Reminds Registered Persons of Continuing Obligation to Update NASD Records*, NASD Notice to Members 97-31, 1997 WL 1909798, at \*1-2 (May 1997) (reminding registered persons of their obligation to notify NASD, now FINRA, of their current mailing address "while . . . associated with any NASD member firm" and "as long as the NASD retains jurisdiction to bring a disciplinary action against the registrant").

letter. The letter warned Kolquist that “[f]ailure to comply with this request may subject you to disciplinary action.” FINRA served the letter on Kolquist by certified and first-class mail to his CRD address. The certified mailing was again returned to FINRA unclaimed, but the first-class mailing was not returned to FINRA. Kolquist did not respond.

**B. FINRA barred Kolquist for failing to respond to its requests for information.**

After Kolquist failed to respond to FINRA’s letters, FINRA initiated proceedings under FINRA Rule 9552 to suspend Kolquist from association with any FINRA member.<sup>3</sup> In a letter dated April 27, 2016, FINRA notified Kolquist that his continued failure to respond would subject him to a suspension on May 23, 2016 (the “Pre-Suspension Notice”). The Pre-Suspension Notice enclosed copies of the March 23 and April 6 letters. It also explained that “the suspension will not take effect” if Kolquist complied fully with the earlier requests for information by May 23, 2016; that he could request a hearing to contest the suspension by May 23, 2016, which would “stay the effective date of any suspension”;<sup>4</sup> and that if suspended he could file a written request to terminate the suspension “on the ground of full compliance.”<sup>5</sup> The Pre-Suspension Notice further explained that if FINRA suspended Kolquist and he “fail[ed] to request termination of the suspension within three . . . months” of April 27, 2016, he would be barred from association with any FINRA member, effective August 1, 2016.<sup>6</sup>

FINRA served the Pre-Suspension Notice on Kolquist at his CRD address by certified and first-class mail. The certified mailing was returned to FINRA unclaimed, but the first-class mailing was not returned to FINRA. Kolquist did not respond.

On May 23, 2016, FINRA conducted a public records search for Kolquist that confirmed that the CRD address was his “current” address. The public records search also listed a previous address.

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<sup>3</sup> See FINRA Rule 9552(a) (providing that “[i]f a . . . 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, . . . FINRA staff may provide written notice to such . . . 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 [the] membership or of association of the person with any member”).

<sup>4</sup> See FINRA Rule 9552(e) (stating that a “request for a hearing shall be made before the effective date of the notice,” which is 21 days after service of the notice).

<sup>5</sup> See FINRA Rule 9552(f) (stating that the person “may file a written request for termination of the suspension on the ground of full compliance with the notice”).

<sup>6</sup> See FINRA Rule 9552(h) (stating that 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”).

That same day, FINRA sent a letter to Kolquist explaining that he was suspended, effective immediately, from association with any FINRA member firm in any capacity (the “Suspension Notice”). FINRA sent copies of the Suspension Notice by certified and first-class mail to his CRD address. The Suspension Notice advised that Kolquist could file a written request to terminate the suspension based on full compliance with the Pre-Suspension Notice, but reiterated that if he did not do so within three months of the date of the Pre-Suspension Notice, he would be automatically barred pursuant to Rule 9552. The certified mailing was returned to FINRA unclaimed. The first-class mailing was not returned to FINRA. Kolquist did not file a written request to terminate the suspension or otherwise respond to the Suspension Notice.

On August 1, 2016, FINRA conducted another public records search for Kolquist. The public records search listed the CRD address as well as an additional new address.

That same day, FINRA sent a letter to Kolquist explaining that he was barred from association with any FINRA member effective immediately (the “Bar Notice”). The Bar Notice informed Kolquist that he could appeal to the Commission by filing an application for review within 30 days and provided the address to which he should send such an application. FINRA served copies of the Bar Notice on Kolquist by certified and first-class mail to his CRD address as well as the new address FINRA found with the public records search. According to USPS tracking information, the certified mailing sent to the new address was “delivered left with individual.” The electronic signature record bears a signature that appears to include the surname “Kolquist.” The certified mailing sent to the CRD address was returned to FINRA unclaimed. The first-class mailings were not returned to FINRA.

### **C. Kolquist responded to the Bar Notice almost nine months after FINRA sent it.**

On May 22, 2017, almost nine months after his bar became effective, Kolquist sent an email to FINRA requesting that he be “reinstated.” Two days later, FINRA replied by email, explaining that by not participating in the expedited proceeding he had failed to exhaust his administrative remedies, that any appeal to the Commission should have been filed within 30 days of the Bar Notice, and that FINRA could not undo the bar. On June 6, 2017, Kolquist again emailed FINRA, acknowledging that “[he] underst[oo]d that [he] had 30 days to respond to the matter and state [his] case” and attributing his failure to do so to a health issue. On June 14, 2017, FINRA replied by email, explaining again that Kolquist had failed to avail himself of FINRA’s administrative process and that FINRA could not lift his ban. On June 16, 2017, Kolquist again emailed FINRA, acknowledging that he “underst[ood] fully the events that took place that led to the bar” and asserting that his health issue had been his “only priority” at the time. Kolquist did not dispute that he received FINRA’s Rule 8210 requests, as well as the Pre-Suspension Notice, Suspension Notice, and Bar Notice.

On August 1, 2017, Kolquist filed an application for review, purporting to seek relief under Rule 193 of the Commission’s Rules of Practice. Kolquist’s application stated that he was “not interested in getting back into the securities industry,” and asked that the Commission “consider [his] case and consider [his] bar being lifted.” The briefing order stated that

“Kolquist’s filing raises a question as to whether Rule 193 is the appropriate procedural basis for any review by the Commission in light of other possible bases for review, such as Rule 420(a) of the Commission’s Rules of Practice.” The order directed the parties to identify “the most appropriate basis for Commission review in this matter” and, if the application met “the standard articulated in Rule 420(a),” to address whether the application “should be dismissed as untimely pursuant to Rule 420(b).” FINRA responded to the briefing order by filing its motion to dismiss. Kolquist did not respond to the briefing order or file an opposition to FINRA’s motion.

## II. Analysis

We find that Kolquist is not eligible for relief under Rule of Practice 193 because that rule is inapplicable to bars from association imposed by FINRA. We construe Kolquist’s application for review as seeking relief under Rule of Practice 420(a), and grant FINRA’s motion to dismiss because Kolquist’s application was untimely.

### A. Rule of Practice 193 is inapplicable to Kolquist’s application for review.

Kolquist’s application for review purported to seek relief under our Rule of Practice 193. That rule “governs applications to the Commission by certain persons, . . . barred *by Commission order* from association with” certain securities industry entities, “for consent to become so associated.”<sup>7</sup> But the Commission has not issued an order barring Kolquist from associating with any of the entities identified in that rule. Rather, FINRA barred Kolquist from associating with any FINRA member. And we have said that an application under Rule of Practice 193 “has no bearing on [an] application for review of FINRA action.”<sup>8</sup> Rule of Practice 193 is, therefore, not an appropriate basis for reviewing the FINRA action of which Kolquist seeks review.

### B. Kolquist’s application for review is untimely under Rule of Practice 420.

We find that Kolquist’s application is subject to Rule of Practice 420 and grant FINRA’s motion to dismiss it as untimely. Rule of Practice 420(a) authorizes the filing of applications for review of certain self-regulatory organization actions, including “[b]ars from association.”<sup>9</sup> Rule of Practice 420(b) specifies that such applications must be filed “within 30 days” of the aggrieved person’s receipt of notice of the action and that the Commission “will not extend this

<sup>7</sup> Rule of Practice 193, 17 C.F.R. § 201.193 preliminary note (emphasis added).

<sup>8</sup> *Eric David Wanger*, Exchange Act Release No. 79008, 2016 WL 5571629, at \*4 n.39 (Sept. 30, 2016); *see also Eric David Wanger*, Exchange Act Release No. 81111, 2017 WL 2953369, at \*3 n.5 (July 10, 2017) (stating that applications “to associate with a registered broker-dealer that is a FINRA member” must be brought “under Exchange Act Rule 19h-1”).

<sup>9</sup> Rule of Practice 420(a), 17 C.F.R. § 201.420(a); *see also* 17 C.F.R. § 240.19d-3 (“Applications to the Commission for review of any . . . bar from association . . . shall be made pursuant to Rule 420 of the Commission’s Rules of Practice.”).

30-day period, absent a showing of extraordinary circumstances.”<sup>10</sup> The Bar Notice also informed Kolquist that if he wished to seek Commission review he had to “file the application for review within thirty days of [his] receipt of [the] letter.” Here, FINRA properly served the Bar Notice on Kolquist at his CRD address, and Kolquist received the Bar Notice no later than August 5, 2016, when it was delivered and signed for at his residence. Yet Kolquist filed his application for review with the Commission on August 1, 2017, nearly eleven months late.

Kolquist never sought an extension of the filing deadline, and did not file a brief addressing the timeliness of his application. No extraordinary circumstances justify accepting his untimely application for review. We have said that “extraordinary circumstances” exist to excuse the lateness of an appeal “where the reason for an applicant’s failure timely to file was beyond the control of the applicant.”<sup>11</sup> Kolquist’s application for review attributed his initial “failure to respond to FINRA” to a “major health issue.” But a letter he attached from a medical professional acknowledged that Kolquist “has continued to work full time and [to] remain active outside of work hours” despite his health issue. Nothing Kolquist submitted suggests that his health issue prevented him from filing an application for review in the thirty days after receiving the Bar Notice, or in the nearly eleven months after that deadline lapsed.

Indeed, even “when circumstances beyond the applicant’s control give rise to the delay” in appealing, the applicant must “demonstrate that he or she promptly arranged for the filing of the appeal as soon as reasonably practicable.”<sup>12</sup> As we have said, “[a]n applicant whose application is delayed as a result of extraordinary circumstances remains under an obligation to proceed promptly in pursuing appellate recourse.”<sup>13</sup> Here, Kolquist requested that FINRA reinstate him on May 22, 2017. Despite the fact that two days later FINRA told Kolquist that by not participating in the expedited proceeding he had failed to exhaust his administrative remedies, that any appeal to the Commission should have been filed within 30 days of the Bar Notice, and that FINRA could not undo the bar, Kolquist waited over two more months to appeal the bar to the Commission. Yet during that period Kolquist sent two additional correspondences to FINRA. Even assuming the reason for Kolquist’s failure to appeal the Bar Notice to the Commission between the time he received it and May 2017 was beyond his control, Kolquist has not shown that he appealed as soon as reasonably practicable thereafter.

As we have repeatedly observed, “strict compliance with filing deadlines facilitates finality and encourages parties to act timely in seeking relief.” Unmet deadlines may cut off

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<sup>10</sup> Rule of Practice 420(b), 17 C.F.R. § 201.420(b).

<sup>11</sup> *Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 WL 2468111, at \*6 (June 17, 2010).

<sup>12</sup> *PennMont Sec.*, Exchange Act Release No. 61967, 2010 WL 1638720, at \*4 (Apr. 23, 2010).

<sup>13</sup> *Id.*

substantive rights to review, but this is their function.”<sup>14</sup> Kolquist has provided no reason to allow the untimely filing of his application for review.

An appropriate order will issue.<sup>15</sup>

By the Commission (Chairman CLAYTON and Commissioners STEIN and PIWOWAR).

Brent J. Fields  
Secretary

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<sup>14</sup> *Aliza A. Manzella*, Exchange Act Release No. 77084, 2016 WL 489353, at \*4 (Feb. 8, 2016) (quoting *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at \*2 (May 8, 2014) (citation omitted)).

<sup>15</sup> We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
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FINRA

ORDER DISMISSING APPEAL OF ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the appeal filed by Kenneth Joseph Kolquist be, and it hereby is,  
dismissed.

By the Commission.

Brent J. Fields  
Secretary