

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86898 / September 6, 2019

Admin. Proc. File No. 3-19214

In the Matter of the Application of

BRENDAN D. FEITELBERG

For Review of Action Taken by

FINRA

ORDER DENYING MOTION TO STAY THE BRIEFING SCHEDULE

On June 21, 2019, Brendan D. Feitelberg filed an application for review of FINRA action pursuant to Section 19(d)(2) of the Securities Exchange Act of 1934.¹ Feitelberg seeks review of FINRA action barring him, in an expedited proceeding pursuant to FINRA Rule 9552, from association with any FINRA member for failing to respond to requests for information. FINRA filed a copy of the index to the record on July 5, 2019, pursuant to Rule 420(e) of the Commission's Rules of Practice.² On July 26, 2019, the Commission ordered that a brief in support of the application for review be filed by August 26, 2019, a brief in opposition be filed by September 25, 2019, and any reply brief be filed by October 9, 2019.³

On August 22, 2019, FINRA filed a motion to dismiss Feitelberg's application for review and stay the briefing schedule. In its motion, FINRA requested that we dismiss Feitelberg's

¹ 15 U.S.C. § 78s(d)(2).

² 17 C.F.R. § 201.420(e).

³ *Brendan D. Feitelberg*, Exchange Act Release No. 86491, 2019 WL 3387090, at *1 (July 26, 2019).

application because his appeal is untimely and he failed to exhaust his administrative remedies. FINRA also requested that we stay the briefing schedule while its motion to dismiss is pending on the ground that the Commission “should first evaluate the dispositive arguments that Feitelberg’s appeal should be dismissed on procedural grounds before it reaches the” merits.

On August 26, 2019, Feitelberg filed his brief in support of his application for review. In his brief, Feitelberg opposed FINRA’s motion to dismiss and stay the briefing schedule, arguing that “the time to file a[n] [application for] review with the SEC ha[d] not passed,” and that “under the Commission’s precedents, [he] ha[d] not failed to exhaust his administrative remedies.”⁴ He argued further that FINRA’s motion should be denied “because the substantive and procedural issues [in this case] are inevitably tied together,” and because FINRA’s “eleventh hour” motion “will do nothing to conserve the resources of the Commission.”

Rule 161 authorizes us to extend the time limits for filing papers for “good cause shown.”⁵ Under that Rule, we “adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.”⁶

FINRA has not made the required showing under Rule 161. As grounds for its motion, FINRA states that “[t]he Commission should first evaluate the dispositive arguments that Feitelberg’s appeal should be dismissed on jurisdictional grounds before it reaches the underlying substance of this appeal.” But Feitelberg’s brief addresses both the procedural issues

⁴ Feitelberg cites, among other cases, *Destina Mantar*, Exchange Act Release No. 79851, 2017 WL 221653 (Jan. 19, 2017), and *Robert J. Langley*, Exchange Act Release No. 50917, 2004 WL 2973866 (Dec. 22, 2004).

⁵ 17 C.F.R. § 201.161(a).

⁶ 17 C.F.R. § 201.161(b).

and the underlying merits. The Commission would benefit from receiving FINRA's opposition brief as it considers FINRA's motion to dismiss, and FINRA does not explain how the denial of its request to stay the briefing schedule would substantially prejudice its case. Under the circumstances, it is appropriate to consider FINRA's motion to dismiss Feitelberg's application for review along with the parties' briefs on the merits.

Accordingly, IT IS ORDERED that FINRA's motion for a stay of the Commission's July 26, 2019 order scheduling briefs is denied; and it is further ORDERED that briefing will proceed as set forth in the Commission's July 26, 2019 order scheduling briefs.

For the Commission, by its Secretary, pursuant to delegated authority.⁷

Vanessa A. Countryman
Secretary

⁷ 17 C.F.R. §§ 200.30-7(a)(4).