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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

In the Matter of ALLIED MILLENNIAL PARTNERS, LLC and DANIEL PETER SOLAKIAN, Applicants.	Rule 9700 Proceeding No. 97002201 STAR No. 20220773242 Hearing Officer–RES **ORDER AND DECISION** March 13, 2023

Applicants' request for redress under the FINRA Rule 9700 Series is dismissed. Putative intervenors' motion is denied as moot.

Appearances

For FINRA: John R. Baraniak, Jr., Esq., Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Applicants: Evan Strassberg, Esq., Michael Best & Friedrich LLP

For Putative Intervenors: Kalju Nekvasil, Esq., Stephen Krosschell, Esq., Goodman & Nekvasil, P.A.

ORDER AND DECISION

I. Introduction

Applicants Allied Millennial Partners, LLC and Daniel Peter Solakian ("Applicants") are parties to a pending arbitration—*Papamihalis v. Allied Millennial Partners*—under the auspices of FINRA's Dispute Resolution Services ("Dispute Resolution"). Applicants allege they are aggrieved by the way Dispute Resolution operates its Dispute Resolution Portal ("DR Portal") and filed this proceeding under the FINRA Rule 9700 Series. After being notified of this proceeding, the claimants in the arbitration ("Arbitration Claimants") moved to intervene. FINRA's Department of Enforcement moved to dismiss the proceeding.

For the reasons stated below, I grant Enforcement's motion to dismiss. I deny the Arbitration Claimants' motion to intervene because it is rendered moot by this Order and Decision. My reasons are grounded in the language of FINRA Rule 9710, which provides that

the purpose of the FINRA Rule 9700 Series "is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA . . . not otherwise provided for by the FINRA rules."[1]

II. Factual Background

The DR Portal is the exclusive means by which claimants can bring FINRA arbitration proceedings and file pleadings therein.[2] The basis for Applicants' grievance is that the DR Portal allegedly recorded and communicated the wrong date on which the Arbitration Claimants had submitted their claim to arbitration against Applicants. To redress this alleged grievance, Applicants request that the initial claim filing date recorded and communicated by the DR Portal be changed to a later date—namely, the date the Arbitration Claimants actually filed their formal statement of claim. This would make a major portion of the arbitration claim untimely under the six-year limitations period for submitting such claims to arbitration.[3]

A brief chronology[4] explains Applicants' alleged grievance with the DR Portal:

June 29, 2021	The Arbitration Claimants filed with the DR Portal a Claim Information Tracking Form, which the DR Portal recorded and communicated as an "initial claim."[5] The Arbitration Claimants failed to file a statement of claim and failed to pay the requisite filing fees. Instead of a statement of claim, the Arbitration Claimants uploaded a pdf titled "Promise to Pay (*Papamihalis v. Allied Millennial*) pdf." The Arbitration Claimants stated in this document, "Please be advised that Claimants will be submitting their Statement of Claim and email confirmation for payment of the filing fee prior to FINRA's deadline for filing."[6] The DR Portal issued the Arbitration Claimants a deficiency notice requiring that they correct all deficiencies in their claim within 30 days.[7]

[1] FINRA Rule 9710.

[2] *See* FINRA Arbitration Rules 12300(a), 12302(c)(2).

[3] *See* FINRA Arbitration Rule 12206 ("No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim").

[4] This chronology is based on Applicants' Application for Relief Under FINRA Rule 9700 Series ("Applicants' Application").

[5] Applicants' Application, Statement of Facts ¶¶ 6, 22.

[6] Exhibit 3 to Applicants' Application.

[7] Applicants' Application, Statement of Facts ¶ 14.

July 22, 2021	The Arbitration Claimants sent a letter to FINRA requesting a thirty-day extension of the deadline to cure the deficiencies in their initial claim.[8]
August 25, 2021	Applicants contend this was the date the six-year limitations period expired with respect to $200,000 of the Arbitration Claimants' $250,000 arbitration claim.[9]
August 27, 2021	The Arbitration Claimants filed a statement of claim. For the first time, Applicants were served and notified of the arbitration claim.[10]

In its motion to dismiss this FINRA Rule 9700 proceeding, Enforcement contends, among other things, that redress for Applicants' alleged grievance is otherwise provided for by FINRA Rules without the need to invoke the FINRA Rule 9700 Series. In their motion to intervene, the Arbitration Claimants similarly contend, among other things, that FINRA Rules otherwise provide redress for Applicants' alleged grievance. Applicants filed an opposition to Enforcement's motion to dismiss. Among other things, Applicants argue that redress for their alleged grievance is not otherwise provided for by FINRA Rules, purportedly because the arbitration panel cannot force Dispute Resolution to change the initial claim filing date in the DR Portal. I consider the parties' and putative intervenors' arguments below.

III. Discussion

A. The Hearing Officer Has Authority to Decide the Merits of This Proceeding on a Motion to Dismiss

Applicants' first line of defense against Enforcement's motion to dismiss is that FINRA Rules do not provide for motions to dismiss. This is true with respect to the FINRA Rule 9000 Series, which is the Code of Procedure for disciplinary proceedings. But the FINRA Rule 9000 Series includes FINRA Rule 9235. This Rule provides, "[t]he Hearing Officer . . . shall have authority to do all things necessary and appropriate to discharge his or her duties."[11] In the exercise of this authority, I held a pre-hearing conference at the beginning of this FINRA Rule 9700 Series proceeding, in which Enforcement expressed its position that Applicants were not entitled to redress as a matter of law and previewed its plan to file a motion to dismiss. Counsel for Applicants seemed to agree with Enforcement's procedural plan, stating, "I think it would be helpful to agree to a schedule that gets this fully briefed and before you [i.e., the Hearing Officer]

[8] Applicants' Application, Statement of Facts ¶ 15.

[9] Applicants' Application, Statement of Facts ¶ 24.

[10] Applicants' Application, Statement of Facts ¶¶ 17-18; Applicants' Application, Discussion at 14.

[11] FINRA Rule 9235(a).

for argument and resolution as quickly as possible."[12] Thus, following the pre-hearing conference, I issued an order setting a briefing schedule for the motion to dismiss.

Moreover, in Applicants' opposition to Enforcement's motion to dismiss—which they filed in accordance with the briefing schedule—they concede that I can treat and decide the motion as a motion for summary disposition.[13] FINRA Rule 9264 provides that summary disposition is warranted "if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law."[14] Here, I find there is no genuine issue as to any material fact. Indeed, the Factual Background section of this Order and Decision adopts Applicants' allegations as being true. In the section below, I determine that Enforcement is entitled to summary disposition as a matter of law.

B. Applicants' Request for Review Is Defective Because Redress for Their Alleged Grievance Is Otherwise Provided for by FINRA Rules

According to FINRA Rule 9710, the purpose of the FINRA Rule 9700 Series is to provide redress that is "not otherwise provided for by the FINRA rules."[15] Thus, the unambiguous language of FINRA Rule 9710 limits my authority to granting redress only when it is "not otherwise provided for by the FINRA rules." In addition, FINRA Rules, including FINRA Rule 9710, "shall be interpreted in light of the purposes sought to be achieved by the Rules and to further FINRA's regulatory programs."[16] When the Securities and Exchange Commission approved the current version of the FINRA Rule 9700 Series in 2008, it noted that the Series had historically been used only for appeals of Over-the-Counter Bulletin Board ("OTCBB") eligibility determinations made by FINRA staff under FINRA Rule 6530:

> The Rule 9700 Series was established to ensure adequate procedural protections to users of FINRA systems. Although by its terms the Rule 9700 Series has potentially broader application, it historically has been used only for appeals of OTCBB eligibility determinations made by FINRA staff pursuant to Rule 6530.[17]

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[12] Transcript of Pre-Hearing Conference (Dec. 22, 2022) at 8.

[13] The OHO pre-hearing order Applicants cite in support of their argument that FINRA Rules do not allow for a motion to dismiss is *Dep't of Enforcement v. Capellini*, OHO Order 22-15 (2020066627202) (July 22, 2022), https://www.finra.org/sites/default/files/2022-08/22-15-Order-Denying-Respondents-Motion-to-Dismiss-with-Leave-to-Re-file-as-a-Motion-for-Summary-Disposition.pdf. In that case, the Hearing Officer denied the respondent's motion to dismiss, but granted her leave to file a motion for summary disposition under FINRA Rule 9264. *Id.* at 2. Thus, *Capellini* does not preclude me from treating Enforcement's motion to dismiss as a motion for summary disposition.

[14] FINRA Rule 9264(e).

[15] FINRA Rule 9710.

[16] FINRA Rule 0130.

[17] Order Approving Proposed Rule Change as Modified by Amendment No. 1, Relating to Amendments to the NASD Rule 9700 Series to Streamline the Procedural Rules Applicable to General Grievances Related to FINRA Automated Systems, Exchange Act Release No. 57786, 73 Fed. Reg. 27595, 27596 (May 13, 2008). The SEC noted that these eligibility determinations were "focus[ed] on one narrow issue": "whether the issuer filed a complete

According to the SEC, the purpose of the revised FINRA Rule 9700 Series was to make a technical change to redress grievances not otherwise provided for by any other FINRA Rules:

> . . . FINRA proposes to make a technical change to the text of Rule 9710, to clarify that the scope of the Rule 9700 Series is to address general grievances *not otherwise provided for by any other FINRA Rules*.
>
> . . . .
>
> . . . [T]he Commission finds that the revisions to the Rule 9700 Series . . . appropriately seek to clarify that the scope of the Rule 9700 Series is to address general grievances *not otherwise provided for by any other FINRA Rules*.[18]

Applicants request that I order Dispute Resolution to: (1) change the DR Portal's recorded and communicated date for when the Arbitration Claimants filed their initial claim; and (2) notify the arbitration panel that the Arbitration Claimants filed their initial claim in August 2021, not on the June 2021 date recorded and communicated by the DR Portal.[19] If I were to do these things, the inevitable result would be that a major portion of the arbitration claim would be rendered untimely under the six-year limitations period. But redress for Applicants' grievance is provided for by a FINRA Rule other than the FINRA Rule 9700 Series. FINRA Arbitration Rule 12206 provides that the arbitration panel decides all questions about the timeliness of arbitration claims:

> No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. *The panel will resolve any questions regarding the eligibility of a claim under this rule*.[20]

FINRA Arbitration Rule 12206 is consistent with settled law on the authority of a FINRA arbitration panel to resolve any questions as to the eligibility of a claim in the face of a timeliness challenge. In *Howsam v. Dean Witter Reynolds*,[21] the United States Supreme Court held that the authority to decide whether a FINRA arbitration claim is timely under the predecessor to FINRA Arbitration Rule 12206 rests with the arbitration panel. The Supreme Court found that "the

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report by the applicable due date and, thus, whether the security of the issuer is eligible for continued quotation" on the OTCBB. *Id.* at *4-5.

[18] *Id.* at *9-10 (emphasis added).

[19] Applicants also submit that certain systemic changes need to be made to the DR Portal, and request that I stay the arbitration proceeding.

[20] FINRA Arbitration Rule 12206(a) (emphasis added). The Rule provides, "Motions under this rule will be decided by the full panel." FINRA Arbitration Rule 12206(b)(3).

[21] 537 U.S. 79 (2002).

applicability of the NASD time limit rule is a matter presumptively for the arbitrator, not for the judge."[22]

Applicants' contention that the DR Portal improperly communicated the wrong date when the Arbitration Claimants filed their initial claim is, in reality, a challenge to the timeliness of the arbitration claim. The question to be decided is: was the Arbitration Claimants' filing of an initial claim, that did not include a statement of claim, a sufficient submission to arbitration within the six-year limitations period of Arbitration Rule 12206? Only the arbitration panel can answer this question, just like any other question "regarding the eligibility of a claim under" FINRA Arbitration Rule 12206.[23] This is the FINRA Rule, not the FINRA Rule 9700 Series, that provides redress for Applicants' alleged grievance.

In fact, Applicants already raised their alleged grievance with the arbitration panel. In the arbitration case, Applicants moved to dismiss a major part of the arbitration claim on timeliness grounds, and they and the Arbitration Claimants briefed and argued their positions with respect to FINRA Arbitration Rule 12206. They addressed the question of the date when the Arbitration Claimants should be deemed to have submitted their claim to arbitration. The facts are not in dispute: the DR Portal's docket sheet shows when the Arbitration Claimants filed their initial claim and the date when they filed their statement of claim. Following oral argument, the arbitration panel stated it will address Applicants' motion in the hearing on the merits.

Applicants argue that the arbitration panel cannot force Dispute Resolution to change the initial claim filing date in the DR Portal. But it is not necessary for the arbitration panel to change the date to sustain Applicants' timeliness objection. The arbitration panel need only find a fact that appears to be undisputed: that the Arbitration Claimants' initial claim did not include a statement of claim. Then, the arbitration panel can decide whether an initial claim lacking a statement of claim is a sufficient submission to arbitration within the six-year limitations period of Arbitration Rule 12206.

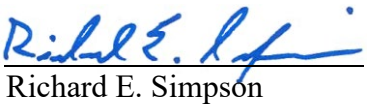
[22] *Id.* at 85.

[23] In reaching my determinations in this Order and Decision, I take no position on how the arbitration panel should answer this question.

IV. Conclusion

For the reasons stated above, Enforcement's motion to dismiss this FINRA Rule 9700 Series proceeding is **GRANTED**. The Arbitration Claimants' motion to intervene is **DENIED** on grounds of mootness. The Office of Hearing Officers submitted this Order and Decision to the National Adjudicatory Council's Review Subcommittee as required by FINRA Rule 9750, and this Office has been notified that the Order and Decision will not be called for review. Thus, this Order and Decision is immediately effective on issuance and constitutes FINRA's final action in this matter.

SO ORDERED.



Richard E. Simpson
Hearing Officer

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