

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 78669 / August 24, 2016

Admin. Proc. File No. 3-17128

In the Matter of the Application of

Christopher A. Parris

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF FINRA ACTION

Registered securities association barred individual under default provision of rule providing expedited procedure for addressing failures to provide requested information. *Held*, association's bar order is *set aside*.

APPEARANCES:

Alan M. Wolper and Heidi E. VonderHeide of Ulmer & Berne LLP for Christopher A. Parris.

Alan Lawhead and Colleen E. Durbin for FINRA.

Appeal filed: February 23, 2016

Last brief received: June 15, 2016

Christopher A. Parris ("Parris") appeals from a FINRA order barring him from association with any FINRA member. FINRA suspended Parris for failing to produce all documents responsive to requests for information and informed Parris that he would be barred unless he requested that his suspension be terminated within three months. Parris made a timely request that FINRA Enforcement terminate his suspension, which it denied. On the same day, FINRA barred him pursuant to Rule 9552(h), which provides that a person who "*fails to request* termination of [a] suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred" (emphasis added). In barring Parris, FINRA did not mention Parris's request to terminate his suspension, and did not explain how FINRA had applied Rule 9552(h) to bar Parris notwithstanding his request.

We conclude that the “specific grounds” on which FINRA barred Parris have no basis in the record.¹ FINRA imposed the bar based on a default, *i.e.*, a failure to request a termination of a suspension, although Parris did make such a request. FINRA’s letter barring Parris did not acknowledge Parris’s request to terminate his suspension or discuss how Rule 9552 operates when such a request has been filed. We accordingly set aside the bar.² Parris did not appeal his suspension, and that suspension remains in effect.

I. Regulatory background

Because it lacks subpoena power, FINRA relies on its Rule 8210 “to police the activities of its members and associated persons.”³ FINRA may, “[f]or the purpose of an investigation” or other authorized proceeding, “require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically” or to testify.⁴ “A failure to comply with Rule 8210 is a serious violation because it subverts [FINRA’s] ability to execute its regulatory responsibilities.”⁵

FINRA rules provide two avenues to enforce compliance with its requests for information. First, FINRA can file a disciplinary complaint alleging a violation of Rule 8210.⁶ In that case, the person alleged to have violated Rule 8210 may defend those allegations under the procedures established by FINRA’s disciplinary rules.

Second, FINRA Rule 9552 “provide[s] a procedural mechanism for FINRA to address” violations of Rule 8210 “more expeditiously than would be possible using the FINRA disciplinary process.”⁷ “If a member, person associated with a member or person subject to FINRA’s jurisdiction fails to provide any information . . . or testimony requested . . . , FINRA staff may provide written notice to such member or person specifying the nature of the failure

¹ See Exchange Act Section 15A(h)(2), 15 U.S.C. § 78o-3(h)(2) (requiring FINRA to provide a statement “setting forth the specific grounds on which” a bar “is based”).

² See Exchange Act Section 19(f), 15 U.S.C. § 78s(f) (providing that we must “set aside” a bar if the “specific grounds” on which it is based do not “exist in fact”).

³ *Caryl Trewyn Lenahan*, Exchange Act Release No. 73146, 2014 WL 4656403, at *3 n.9 (Sept. 19, 2014) (quoting *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 WL 611732, at *3 (Sept. 14, 1998)).

⁴ FINRA Rule 8210(a)(1).

⁵ *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at *6 (Sept. 10, 2010).

⁶ See, e.g., *id.* at *7-8 (sustaining bar order entered in disciplinary proceeding where applicant failed to provide any information responsive to Rule 8210 request until after FINRA’s predecessor “filed its complaint” against him).

⁷ Order Approving Proposed Rule Change Relating to FINRA Rule 8313, Exchange Act Release No. 69825, 2013 WL 3167815, at *3 (June 21, 2013).

and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.”⁸

A recipient of a Rule 9552 notice generally may stay his suspension by filing a request for a hearing that “set[s] forth with specificity any and all defenses to the FINRA action.”⁹ Subject to the expedited hearing procedures provided in Rule 9559, a FINRA “Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.”¹⁰

Under Rule 9552(e), “[a] request for a hearing shall be made before the effective date of the notice” (*i.e.*, the date the suspension becomes effective).¹¹ Where a person does not file a request for a hearing before the effective date, the person “may file a written request for termination of the suspension on the ground of full compliance with the notice,” which generally must be filed with “the head of the FINRA department or office that issued the notice” who “may grant relief for good cause shown.”¹² Other than by settlement,¹³ this is the only means by which a suspended person may request that a suspension be vacated.

Rule 9552 also contains a “Default” procedure that applies when a person fails to timely pursue the options discussed above: “A member or person who is suspended under [Rule 9552] 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.”¹⁴

II. Factual background

This matter arises out of FINRA’s investigation of First American Securities (“FAS”), a FINRA member firm. Parris is a 50% owner of FAS’s parent entity. In connection with its investigation, FINRA took on-the-record testimony from Parris on September 10 and 11, 2015. Although he provided testimony, Parris asserted that he was not subject to FINRA’s jurisdiction and that he had appeared voluntarily, rather than pursuant to FINRA’s request under Rule 8210.

⁸ FINRA Rule 9552(a).

⁹ FINRA Rules 9552(d) and (e).

¹⁰ FINRA Rule 9552(c).

¹¹ *See* FINRA Rule 9552(d), (e). *But see Elliot M. Hershberg*, Exchange Act Release No. 53145, 2006 WL 140646, at *2 (Jan. 19, 2006) (granting hearing after suspension became effective where applicant through new counsel “submitted a Motion for Reinstatement and requested a hearing to challenge his suspension” three days before deadline to seek termination of suspension).

¹² FINRA Rule 9552(f).

¹³ *See* FINRA Rule 9552(g) (“Settlement Procedure”).

¹⁴ FINRA Rule 9552(h) (under subheading “Defaults”) (emphasis added).

On September 15, 2015, FINRA sent Parris a letter memorializing requests for documents and information that it made during his testimony. Pursuant to Rule 8210, FINRA requested that Parris provide the documents and information no later than September 22, 2015. In response, Parris's counsel reiterated his objection to FINRA's jurisdiction and stated that "we will provide as many or as few responsive documents as we deem appropriate," and "whatever production we make may or may not be in accordance with your stated deadline."

On September 23, 2015, FINRA sent Parris a letter stating that it had not received the requested information and that, as a result, Parris was "in violation of FINRA Rule 8210." FINRA informed Parris that if he did not produce the requested information by September 30, 2015, "he may be subject to the institution of a non-summary or formal disciplinary proceeding leading to sanctions, including a bar from the securities industry." On October 1, 2015, FINRA sent Parris another letter stating that "none of the information requested in [its] initial letter dated September 15, 2015, or [its] second letter dated September 23, 2015, have been received." Parris subsequently provided some requested documents to FINRA.

In a letter dated October 16, 2015, FINRA informed Parris that, because he had failed to provide information requested under Rule 8210, he would be suspended from association with any FINRA member on November 9, 2015. The letter stated that if Parris took "corrective action by complying with the requests before the Suspension Date, the suspension will not take effect," but he "may still be subject to a disciplinary action."

FINRA informed Parris that "[u]nder FINRA Rule 9552(e), you may request a hearing in response to this Notice" before November 9, 2015, which would stay the effective date of any suspension. FINRA also told Parris that "[u]nder FINRA Rule 9552(f), if you are suspended, you may file a written Request for Termination of the Suspension on the ground of full compliance with this Notice." And under the heading "Default," FINRA stated that "[i]f you fail to request termination of the suspension within three (3) months of the date of this Notice of Suspension, i.e., by January 19, 2016, you will automatically be barred from associating with any FINRA member in any capacity. *See* FINRA Rule 9552(h)."

Parris subsequently reiterated his jurisdictional objection and produced some, but not all, documents in response to FINRA's requests. He did not request a hearing.

On November 9, 2015, FINRA sent Parris a letter notifying him that, effective that same date, he had been suspended from association with any FINRA member in any capacity. The notice reminded Parris that he could request termination of his suspension on the ground of full compliance and warned him that "[i]f you fail to request termination of the suspension within three (3) months of the date of the original Notice of Suspension, you will automatically be barred on January 19, 2016 from associating with any FINRA member in any capacity."¹⁵ Parris subsequently produced additional documents. On January 6, 2016, FINRA sent Parris another letter identifying documents that FINRA believed he still had not produced.

¹⁵ January 16, 2016—exactly three months after the date of the original suspension notice—was a Saturday, and the following Monday, January 18, 2016, was a holiday.

On January 19, 2016, Parris produced additional documents and responded to FINRA's January 6 letter. Parris objected to producing certain responsive documents on the grounds that they were not relevant to the investigation or that Parris was not subject to FINRA's jurisdiction. He also explained his basis for contending that other requests were satisfied. On the same day, Parris sent a separate letter to the head of FINRA Enforcement that, pursuant to Rule 9552(f), "request[ed] that the suspension imposed upon him on November 9, 2015 be terminated on the grounds that he has fully complied with FINRA's 8210 requests."

On January 21, 2016, FINRA Enforcement informed Parris that it had denied his request to terminate his suspension because it was "not aware of any facts that would constitute good cause to terminate the suspension." The letter further stated that Parris "has not responded to at least two request items" and that, "[w]ith respect to the other items, [FINRA] staff is working to determine whether [his] last minute response dated January 19, 2016, is sufficient to satisfy those requests."

Also on January 21, 2016, in a separate letter FINRA notified Parris that, pursuant to FINRA Rule 9552(h) and "in accordance with FINRA's Notice of Suspension letter dated October 16, 2015, and the Suspension from Association letter dated November 9, 2015, you were barred from associating with any FINRA member in any capacity on January 19, 2016." The October 16 and November 9 letters warned Parris that if he failed to request termination of his suspension by January 19, 2016, he would be automatically barred. The January 21, 2016 letter did not mention Parris' January 19 letter seeking termination of the suspension, FINRA Enforcement's separate January 21 letter denying Parris's request to terminate his suspension, or provide any other basis, besides the October 16 and November 9 letters, for FINRA's decision to bar Parris.

III. Analysis

We review a FINRA decision to impose a bar pursuant to Rule 9552(h) under the standard set forth in Exchange Act Section 19(f).¹⁶ To sustain such action, we must find (among other things) that "the specific grounds on which such . . . bar . . . is based exist in fact."¹⁷ Otherwise, we must set the bar aside.¹⁸

¹⁶ *Michael Nicholas Romano*, Exchange Act Release No. 76011, 2015 WL 5693099, at *4 n.10 (Sept. 29, 2015) ("Section 19(f) provides the standard for our review of expedited disciplinary proceedings for violations of Rule 8210."); *see also* Exchange Act Section 19(f), 15 U.S.C. § 78s(f) (applying in "any proceeding to review . . . the barring of any person from becoming associated with a member of a self-regulatory organization").

¹⁷ Exchange Act Section 19(f), 15 U.S.C. § 78s(f).

¹⁸ *Id.*

FINRA may not impose a bar on a basis not supported by the record.¹⁹ The specific grounds that FINRA articulated for the bar in its January 21, 2016 letter to Parris do not exist in fact. In that letter, FINRA informed Parris that he had been barred pursuant to FINRA Rule 9552(h) and in accordance with prior letters cautioning that he could be barred if he “fail[ed] to request termination of the suspension” from association “by January 19, 2016.” Rule 9552(h) is titled “Defaults,” and provides that FINRA may bar an associated person who has failed to request a termination of his suspension. But Parris did not default; he timely requested that his suspension “be terminated on the grounds that he has fully complied with FINRA’s 8210 requests.”

Nor may FINRA rely on a basis not articulated in the January 21 letter barring Parris to impose a bar. FINRA contends that the order barring Parris was consistent with a reasonable application of Rule 9552 because its “structure, purpose, and text reinforce the conclusion that a meritless request to terminate a suspension is the same as not requesting termination.” But we will not consider this explanation because FINRA provided it for the first time in its brief on appeal.²⁰

¹⁹ See *CleanTech Innovations, Inc.*, Exchange Act Release No. 69968, 2013 WL 3477086, at *10 (July 11, 2013) (setting aside NASDAQ delisting decision under Exchange Act Section 19(f) because “the record does not show that the grounds on which NASDAQ relied in delisting CleanTech exist in fact”); cf. *Kent M. Houston*, Exchange Act Release No. 66014, 2011 WL 6392264, at *8-9 (Dec. 20, 2011) (setting aside bar imposed in disciplinary proceeding where, although “NASD deemed [applicant]’s failure to appear for [on-the-record testimony] as a failure to respond in any manner to a request for information issued pursuant to Rule 8210,” he “did respond in some manner to NASD’s request”).

²⁰ *CleanTech*, 2013 WL 3477086, at *6 n.44 (declining to consider “NASDAQ’s arguments in support of the grounds on which it based its delisting decision” because they were “not supported by facts established by the record, but only by assertions made in its briefs”). FINRA cannot rewrite the bar notice (and thus amend the evidentiary record) by articulating a new basis for its action on appeal. See *Richard T. Sullivan*, Exchange Act Release No. 40671, 1998 WL 786943, at *6 (Nov. 12, 1998) (“It is important that a self-regulatory organization clearly explain the basis for its conclusions. If it fails to do so, an applicant is impaired in his or her ability to urge a contrary position to us, and we cannot discharge our review function.”).

FINRA may also not rely on FINRA Enforcement's separate January 21 letter denying Parris's request to terminate his suspension as a basis for sustaining the bar because that letter did not purport to bar Parris. And the January 21 letter imposing the bar did not acknowledge that Parris requested termination of his suspension.²¹ Accordingly, we set aside the bar.²²

In so doing, we leave in place FINRA's November 9, 2015 suspension of Parris. Parris did not appeal the suspension, and FINRA's bar order did not terminate it. We reject FINRA's argument that Parris is now subject to a "perpetual suspension." FINRA has previously terminated a suspension, even after imposing a bar, on the ground of full compliance with its requests for information.²³ And FINRA has done so after previously refusing to terminate the suspension until there was full compliance with its information requests.²⁴

²¹ FINRA argues that this case is indistinguishable from *Norman Chen*, Exchange Act Release No. 65345, 2011 WL 4336720 (Sept. 16, 2011). In *Chen*, we granted FINRA's motion to dismiss Chen's application for review because we found that "Chen's conduct 'amounted to a complete failure to respond,'" and Chen's written request for termination of the suspension was not "on the ground of full compliance." *Id.* at *3. That is not the case here. Parris gave testimony and provided documents in response to FINRA's requests and, consistent with FINRA Rule 9552(f), Parris filed his written request for termination of the suspension on the ground that he had fully complied with FINRA's requests under Rule 8210. In any event, FINRA informed Parris that he would be barred pursuant to Rule 9552(h) if he failed to request termination of his suspension on the ground of full compliance and, in imposing the bar, FINRA could not ignore that Parris had in fact done so.

²² We reject FINRA's request that we dismiss Parris's appeal for failure to exhaust administrative remedies. FINRA argues that Parris waived any right to contest the bar because he did not request a FINRA hearing before his suspension came into effect. We disagree. Although the Commission has consistently held that "we will not consider an application for review if that applicant has failed to exhaust FINRA's procedures for contesting the sanction at issue," *see Lenahan*, 2014 WL 4656403, at *2, the "sanction at issue" in this matter is the bar, not the suspension. Rule 9552(h) does not authorize a bar based on a failure to request a hearing; it authorizes a bar based on a failure to request that a suspension be terminated. That failure did not occur. Parris's decision to forgo a hearing on his suspension three months earlier does not preclude him from challenging a bar that was imposed subsequently on a basis inconsistent with the record.

²³ *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at *3 (July 27, 2015) (stating that "FINRA terminated Evansen's suspension and vacated the automatic bar" after Evansen provided the information that FINRA had requested).

²⁴ *See id.* at *2.

FINRA may still take any action against Parris permitted under its rules, and Parris may appeal any subsequent action taken against him in a manner consistent with the Exchange Act.²⁵

An appropriate order will issue.²⁶

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Fields
Secretary

²⁵ *See id.* at *2-4 (sustaining bar imposed pursuant to disciplinary proceeding for violating Rule 8210 after FINRA had vacated a bar that it imposed pursuant to Rule 9552). FINRA's September 23, 2015 letter to Parris suggests that it believes it has a basis to proceed against Parris in a disciplinary hearing for violation of Rule 8210, and Parris contends that FINRA should afford him a hearing with respect to his compliance with its requests. We do not intend to suggest that FINRA take any particular action in this matter.

²⁶ 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
Release No. 78669 / August 24, 2016

Admin. Proc. File No. 3-17128

In the Matter of the Application of

Christopher A. Parris

For Review of Action Taken by

FINRA

ORDER SETTING ASIDE FINRA ACTION

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

ORDERED that the order barring Christopher A. Parris from association with any
FINRA member in any capacity is set aside.

By the Commission.

Brent J. Fields
Secretary