

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

REGULATORY OPERATIONS,

Complainant,

v.

McBARRON CAPITAL LLC,  
(CRD No. 131431),

Respondent.

Expedited Proceeding  
No. DFC160001

STAR No. 20160521585

Hearing Officer–MJD

**EXPEDITED DECISION**

December 8, 2016

**Respondent failed to file a proper hearing request as required by Rules 9553(e) and 9559. Thus, Respondent’s request for hearing is rejected, and the Notice of Intent to Cancel Membership constitutes final FINRA action pursuant to Rule 9553(f).**

**Appearances**

For the Complainant: Deon McNeil-Lambkin, Esq., Meredith MacVicar, Esq., and Ann-Marie Mason, Esq., for Regulatory Operations, Financial Industry Regulatory Authority.

For the Respondent: James Crafa, Executive Representative and Chief Executive Officer of McBarron Capital LLC.

**DECISION**

**I. Background**

On October 31, 2016, Respondent McBarron Capital LLC filed a Uniform Request Withdrawal from Broker-Dealer Registration (Form BDW). On November 1, 2016, FINRA staff sent Respondent a Notice of Intent to Cancel Membership (“Notice”) pursuant to FINRA Rule 9553. FINRA staff cited Article IV, Section 5, of FINRA’s By-Laws, which requires that all indebtedness due to FINRA be paid in full before a termination from membership can be deemed effective. The Notice informed Respondent that outstanding fees owed totaled \$5,257.24.<sup>1</sup>

The Notice also informed Respondent that cancellation of its registration would become effective on November 22, 2016, unless, before that date, the firm demonstrates that it has: (1) paid the balance in full; (2) entered into a fully-signed written installment payment plan with FINRA and that payments due under the agreement are current; (3) timely filed an action to

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<sup>1</sup> According to the Notice, the amount owed includes a \$3,186.93 Member Regulation annual fee, a \$370.31 fee associated with the Central Registration Depository, and a member surcharge of \$1,700 assessed in connection with a FINRA arbitration proceeding.

vacate or modify any award that was issued in the arbitration proceeding(s), and such motion has not been denied; or (4) filed for bankruptcy protection and the outstanding fees have not been deemed by a federal court to be non-dischargeable.

The Notice further informed Respondent that it had the right to request a hearing with the Office of Hearing Officers before the November 22, 2016 effective date. Pursuant to Rules 9553(d) and 9559(c), a timely request for a hearing stays the effective date of the cancellation of registration. Pursuant to Rule 9553(e), the request for a hearing must set forth with specificity any and all defenses to the FINRA action. If the request for a hearing is not timely filed, the Notice constitutes final FINRA action.

## **II. Procedural History**

On November 21, 2016, Respondent filed a request for a hearing with the Office of Hearing Officers in response to the Notice. I rejected Respondent's request for a hearing because it did not set forth defenses as required by Rules 9553(e) and 9559.<sup>2</sup> On November 23, 2016, I issued an order instructing Respondent to file a hearing request conforming to Rules 9553(e) and 9559 no later than 5:00 p.m. on December 5, 2016. The order informed Respondent that if it failed to file a rule-compliant request for a hearing the Notice would become the final FINRA action pursuant to Rule 9553(f) and the cancellation of its membership would become effective at the opening of business on December 6, 2016.

On December 5, 2016, at 2:59 p.m., the Office of Hearing Officers received an email from Respondent requesting an additional 30-day extension of time within which to file a rule-compliant request for a hearing.

On December 5, 2016, at 5:11 p.m., I issued an order denying Respondent's request for a 30-day extension of time and I instructed Respondent to file a hearing request conforming to the applicable rules with the Office of Hearing Officers by midnight.

## **III. Conclusion**

Respondent failed to file the hearing request by midnight, December 5, 2016.

On December 6, 2016, at 11:51 a.m., the Office of Hearing Officers received an email from Respondent. In the email, Respondent stated that it "denies the charge as set forth in this matter" and that its "affirmative defense is that actions tak[en] by FINRA in collusion with the SEC and New York State were done for the purpose of rendering McBarron financially

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<sup>2</sup> In its request for a hearing received November 21, 2016, Respondent stated that the purpose of the hearing is to "request a delay in the effective date of the cancellation of [Respondent's] FINRA membership, until such time as the full amount of monies due FINRA for fees and charges owed by [Respondent] can be fully determined." Respondent added that because the amount owed "can only be determined after the remaining open, pending, and new FINRA related matters are brought to volition [sic], the extension needs to cover the time period necessary for [Respondent] to complete the BDW process." Respondent also said it wanted a hearing for the purpose of getting additional time to acquire "funds needed to meet [its] financial obligations." These statements do not set forth with specificity defenses to FINRA's action, as required by Rule 9553(e).

insolvent.” Respondent’s December 6 request for a hearing does not meet the requirements of Rule 9553(e) because it fails to set forth a permissible defense. It is instead a collateral attack on the validity of the fees assessed. Collateral attacks are not allowed in this forum because a Hearing Officer is not permitted to reconsider fees imposed on a member firm.<sup>3</sup> Respondent’s email is also untimely.

Thus, Respondent’s request for hearing is rejected, and the Notice constitutes final FINRA action pursuant to Rule 9553(f).

#### **IV. Order**

McBarron Capital LLC’s FINRA membership is canceled effective with the issuance of this Decision.

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Michael J. Dixon  
Hearing Officer

Copies to:    McBarron Capital LLC (via overnight courier, electronic and first-class mail)  
                  Ann-Marie Mason, Esq. (via electronic and first-class mail)  
                  Meredith MacVicar, Esq. (via electronic mail)  
                  Deon McNeil-Lambkin, Esq. (via electronic mail)

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<sup>3</sup> See OHO Order 06-56 (DFC060004) (Dec. 20, 2006), at 2 n.1, <http://www.finra.org/sites/default/files/OHODecision/p018440.pdf> (citing *John G. Pearce*, 52 S.E.C. 796, 798 (1996)).