

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

REGULATORY OPERATIONS,

Complainant,

v.

EDWARD ANTHONY LASCALA
(CRD No. 1294423),

Respondent.

Expedited Proceeding
No. ARB180037

STAR No. 20180605779

Hearing Officer—DRS

ORDER DENYING MOTION TO DISMISS

This expedited proceeding is scheduled for hearing on January 29, 2019.¹ At a pre-hearing conference held on January 23, 2019, LaScala asserted, for the first time, that FINRA lacked jurisdiction over this proceeding. He argued that because he is not currently associated with a member firm, Article V, Section 4(b) of FINRA's By-laws governs jurisdiction. Further, LaScala interprets this provision as precluding the imposition of a suspension more than two years after the arbitration settlement that serves as the basis for this proceeding. Thus, according to LaScala, because the settlement agreement was executed more than two years ago, this case must be dismissed for lack of jurisdiction. Regulatory Operations disputed this jurisdictional argument.

I find LaScala's jurisdiction argument meritless. Article V, Section 4(b) of FINRA's By-laws provides that

[a] person whose association with a member has been terminated and is no longer associated with any member of [FINRA] shall continue to be subject to a proceeding to suspend ... his ... ability to associate with a member based on [his] failure to comply with ... a written and executed settlement agreement obtained in connection with an arbitration ... submitted for disposition pursuant to the [FINRA's] Rules, provided that such proceeding is instituted within two years after the date of entry of such ... settlement.

This provision amended the By-law section governing retention of jurisdiction. According to Notice to Members 04-57 ("NTM"), the amendment allowed "NASD [now FINRA] to institute suspension proceedings against a formerly associated person for failing to

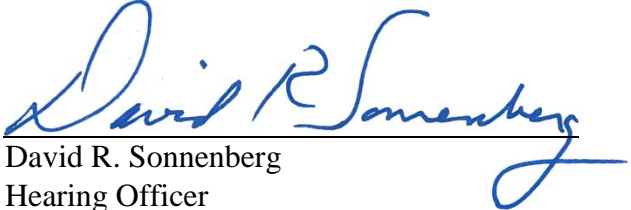
¹ Order Granting Motion for a Continuance (Dec. 18, 2018), at 1.

pay ... [a] settlement for a period of two years after the ... settlement agreement was entered into.”² The NTM explained why NASD sought to amend the By-laws. Before the amendment, NASD lacked “jurisdiction over formerly associated persons for conduct that commenced after an associated person terminated his or her association.”³ This was problematic “[b]ecause associated persons remain subject to arbitration or mediation claims for conduct that occurred during their association even after they terminate their association with a member,” but “a claim may not be resolved, or even filed, until after that time.”⁴ Thus,

[i]n such cases, NASD lacked the ability to bring suspension proceedings for failure to pay such awards. In addition, NASD was concerned that a person associated with a member might deliberately terminate his or her association with the member once aware that an arbitration award was about to be entered against him or her in order to avoid sanction by NASD for failure to pay any award or settlement agreement resulting from the proceeding.⁵

Based on the foregoing, it is plain that Article V, Section 4(b) of FINRA’s By-laws applies only when FINRA institutes a proceeding against a formerly associated person. While LaScala is not currently associated with a member Firm, this proceeding was instituted against him—i.e. the Notice of Suspension was issued—while he was still registered.⁶ Therefore, I find this By-law section inapplicable to this proceeding. Treating LaScala’s arguments at the pre-hearing conference as a motion to dismiss, his motion is **DENIED**.

SO ORDERED.


David R. Sonnenberg
Hearing Officer

Dated: January 25, 2019

² NASD Notice to Members 04-57 (Aug. 2004) at 635, <http://www.finra.org/sites/default/files/NoticeDocument/p009798.pdf>.

³ *Id.* at 636.

⁴ *Id.*

⁵ *Id.*

⁶ The effective date of termination of LaScala’s last FINRA registration was January 9, 2019 JX-1, at 3. The Notice of Suspension was issued on November 7, 2018. JX-5, at 1. JX-1 and JX-5 were submitted by Complainant as part of its pre-hearing submissions. I hereby deem these two exhibits part of the record. *See* FINRA Rules 9559(1) (“Rule 9267 shall govern the record of the proceeding”) and 9267(a)(8) (providing that the record consists of, among other things, any “Document or item accepted into the record by the Hearing Officer ...”).

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