

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 15-3729

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOUGLAS A. TROSZAK,

Petitioner,

V.

SECURITIES AND EXCHANGE COMMISSION.

Respondent.

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ON PETITION FOR REVIEW OF
AN ORDER OF THE SECURITIES
AND EXCHANGE COMMISSION

FILED
Jun 29, 2016
DEBORAH S. HUNT, Clerk

O R D E R

Before: KEITH, GIBBONS, and DONALD, Circuit Judges.

Douglas A. Troszak, proceeding pro se, petitions this court for review of an order of the Securities and Exchange Commission sustaining disciplinary action taken against him by the Financial Industry Regulatory Authority (FINRA). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

FINRA is a self-regulatory organization “responsible for conducting investigations and commencing disciplinary proceedings against [FINRA] member firms and their associated member representatives relating to compliance with the federal securities laws and regulations.” *Fiero v. Fin. Indus. Regulatory Auth., Inc.*, 660 F.3d 569, 571 (2d Cir. 2011) (quoting *D.L. Crowell Invs., Inc. v. NASD Regulation, Inc.*, 279 F.3d 155, 157 (2d Cir. 2002)). Troszak was the president, chief financial officer, chief compliance officer, financial and operations principal, and sole registered representative of North Woodward Financial Corp., a FINRA member firm. In 2010, FINRA began an investigation and requested documents and information from North

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Woodward and Troszak after learning that Troszak may have borrowed money from customers to pay off property in foreclosure and that he may have been issued a federal tax lien, which had not been disclosed on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

FINRA's Department of Enforcement subsequently filed a complaint against North Woodward and Troszak, alleging (1) that they failed to amend Troszak's Form U4 to disclose the tax lien against him, in violation of Article V, Section 2 of FINRA's By-Laws, FINRA Rule 2010, and National Association of Securities Dealers (NASD) Rule 2110 and (2) that they failed to respond to requests for information and documents, in violation of FINRA Rules 2010 and 8210. After a hearing, a three-member FINRA panel found that North Woodward and Troszak failed to timely disclose the tax lien on Troszak's Form U4 and failed to provide documents and information requested by FINRA. Based on the failure to comply with FINRA's information requests, the hearing panel barred Troszak from association in any capacity with any FINRA member firm and expelled North Woodward from FINRA membership. North Woodward and Troszak appealed the hearing panel's decision to FINRA's National Adjudicatory Council, which affirmed the hearing panel's findings of violations as well as the sanctions for failing to respond to FINRA's information requests.

North Woodward and Troszak then submitted an application for review with the Commission. *See* 17 C.F.R. § 201.420. After an independent review of the record, the Commission sustained FINRA's findings of violations and the disciplinary action taken against North Woodward and Troszak. This petition for review followed.

"The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive." 15 U.S.C. § 78y(a)(4). We will "uphold the Commission's legal conclusions unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Gibson v. SEC*, 561 F.3d 548, 553 (6th Cir. 2009) (internal quotation marks omitted).

The Commission concluded that Troszak violated FINRA Rules 8210 and 2010 by providing only partial responses to FINRA's requests for information about his loans from North Woodward's customers. "In the absence of subpoena power, FINRA must rely on its procedural

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rules to compel the production of materials from member firms.” *Busacca v. SEC*, 449 F. App’x 886, 890 (11th Cir. 2011). FINRA Rule 8210 requires members and associated persons to provide information to FINRA in the course of an investigation. FINRA Rule 2010 requires members to “observe high standards of commercial honor and just and equitable principles of trade.”

Troszak does not dispute that he failed to provide complete responses to FINRA’s information requests. Troszak instead makes several arguments purportedly justifying his refusal to provide the requested information.

Troszak argues that FINRA exceeded its regulatory authority by requesting information about the transactions at issue, asserting that the transactions were loans from friends rather than securities. The Commission rejected Troszak’s argument:

FINRA’s disciplinary authority is broad enough to encompass business-related conduct that may contravene the high ethical standards to which members and associated persons must adhere, even if that conduct does not involve a security. The fact that Troszak sought and received a substantial amount of money in the form of loans from customers of North Woodward to address his financial difficulties logically raised questions for FINRA about whether his business-related conduct comported with those ethical standards.

See Vail v. SEC, 101 F.3d 37, 39 (5th Cir. 1996) (“[T]he SEC has consistently held that [FINRA’s] disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.” (internal quotation marks omitted)). The Commission stated that FINRA has a legitimate interest in loans between registered persons and their customers because of the potential for misconduct. *See* FINRA Rule 3240 (prohibiting loans from customers unless certain requirements are satisfied); NASD Notice to Members 03-62, 2003 WL 22324879, at *1 (Oct. 8, 2003) (“NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers’ best interests, or by borrowing funds from, but not repaying, customers.”).

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Troszak further contends that FINRA requested information that was not in his or North Woodward's possession, custody, or control. According to Troszak, the borrowed funds went directly from First Southwest to Bayview Title, and those entities have possession, custody, and control over the information requested by FINRA. The Commission concluded that Troszak neither attempted to obtain the information from First Southwest or Bayview Title nor provided any meaningful explanation as to why he could not obtain the information.

According to Troszak, responding to FINRA's information requests would have required him to disclose his customers' tax return information in violation of federal tax law. The Commission determined that FINRA requested information about principal and interest payments that Troszak made to his customers—information that originated with Troszak. The Commission concluded, "The fact that the information also appeared in the customers' tax returns does not excuse Troszak's obligation to provide it to FINRA."

Substantial evidence supports the Commission's determination that Troszak's incomplete responses to FINRA's information requests violated FINRA Rules 8210 and 2010 and that his reasons for failing to respond fully were not persuasive. Troszak does not challenge the Commission's conclusion that he violated Article V, Section 2(c) of FINRA's By-Laws, FINRA Rule 2010, and NASD Rule 2110 by not timely amending his Form U4. Nor does Troszak argue that the disciplinary action—barring him from association in any capacity with any FINRA member firm—constituted a gross abuse of discretion. *See Gibson*, 561 F.3d at 554; *PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1174-76 (D.C. Cir. 2009). Those issues are deemed abandoned. *See Youghioghenny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 955 (6th Cir. 1999).

Troszak asserts that FINRA is a "state actor" required to provide him with constitutional protections and that FINRA Rule 8210 is "unconscionably vague" in violation of due process. Troszak's brief also refers to the First, Second, Fourth, Fifth, Tenth, Fourteenth, and Sixteenth Amendments. Troszak did not raise his constitutional challenges before the Commission. "No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so." 15 U.S.C. § 78y(c)(1). Troszak does not offer any

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reasonable grounds for failing to raise his constitutional challenges before the Commission; therefore, those arguments cannot be considered by this court. *See SEC v. Waco Fin., Inc.*, 751 F.2d 831, 834 (6th Cir. 1985).

For the foregoing reasons, we **DENY** Troszak's petition for review.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk