

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 65117 / August 11, 2011

Admin. Proc. File No. 3-14317

In the Matter of the Application of

KENT D. SWEAT  
and  
INTERMOUNTAIN FINANCIAL SERVICES, INC.  
2636 S. Old Settlers Road  
Heber City, UT 84032

For Review of Disciplinary Action Taken by

FINRA

ORDER DENYING  
MOTION FOR  
RECONSIDERATION

(CORRECTED)

Kent D. Sweat, a FINRA-registered general securities representative and principal, and Intermountain Financial Services, Inc. ("IFS"), a FINRA member firm of which Sweat is the President and Chief Compliance Officer (Sweat and IFS, collectively, "Applicants"), move for reconsideration of our June 10, 2011 order dismissing Applicants' petition for review for failure to file a brief pursuant to Rule of Practice 180(c).<sup>1</sup> Applicants' motion, which Sweat submitted, states, in its entirety, that "[a]ccording to rule 470, I am requesting reconsideration of my appeal, which was denied because of my failure to file documents due to illness. P.S. Enclosed is your order dismissing my appeal."

We analyze Applicants' motion for reconsideration under Rule of Practice 470.<sup>2</sup> Reconsideration is an extraordinary remedy "designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence."<sup>3</sup> Motions for reconsideration,

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<sup>1</sup> 17 C.F.R. § 201.180(c).

<sup>2</sup> 17 C.F.R. § 201.470.

<sup>3</sup> *Perpetual Sec., Inc.*, Securities Exchange Act Rel. No. 56962 (Dec. 13, 2007),

(continued...)

therefore, are granted only in exceptional cases. Applicants' motion does not establish a basis for reconsideration here.

### I.

This matter involves Applicants' repeated failures to file documents or provide other information to regulatory authorities. Applicants' underlying appeal sought review of FINRA's finding that Applicants failed to respond to FINRA requests for information. According to the FINRA hearing panel, FINRA repeatedly attempted to obtain information concerning IFS's net capital position during routine examinations of the firm.<sup>4</sup> FINRA scheduled an examination with Applicants for June 7, 2010, but delayed the examination at Applicants' request until September 20, 2010 due to Sweat's travel plans for a family reunion. Sweat then informed FINRA that he would also be away on the rescheduled examination date. FINRA again agreed to postpone the examination, this time until September 27, 2010, but on September 23, 2010, Sweat informed FINRA that he was attending a wedding in Atlanta, was not feeling well, and was not sure whether he would be able to assist in the examination on September 27. When examiners arrived at IFS's offices, located in Sweat's home in Heber City, Utah, Sweat stated that he was not feeling well and could not participate in the scheduled examination.

FINRA staff subsequently requested that IFS provide financial books and records by September 28, 2010 pursuant to Rule 8210.<sup>5</sup> A FINRA examiner testified at Applicants' disciplinary hearing that FINRA needed the information to assess whether IFS maintained sufficient net capital after paying a settlement related to an earlier FINRA disciplinary proceeding. FINRA asserted that Sweat provided some documents on September 28, but that the response was incomplete. As a result, on October 5, 2010, FINRA issued another Rule 8210

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<sup>3</sup> (...continued)

92 SEC Docket 472, 473; *see also Laminare Corp.*, Exchange Act Rel. No. 56789 (Nov. 15, 2007), 91 SEC Docket 3221, 3223; *Feeley & Wilcox Asset Mgmt. Corp.*, 56 S.E.C. 1264, 1265 (2003).

<sup>4</sup> Applicants do not dispute the findings contained in the hearing panel's March 25, 2011 decision. Instead, Sweat wrote in Applicants' notice of appeal to the Commission only that "[a]t the time of the [information] request I had suffered health complications associated with diabetes which prohibited me from providing the requested information" and that he intended to provide FINRA with the requested information by June 25, 2011. The record provides no indication that he ever did do.

<sup>5</sup> FINRA Rule 8210 requires members and persons associated with a member to "provide information orally [or] in writing . . . with respect to any matter involved in . . . [a FINRA] examination." Rule 8210 further states that FINRA staff shall have the right to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in . . . [a FINRA] examination."

request for Applicants to bring the information to FINRA's Denver office by October 19, 2010. When Applicants failed to do so, FINRA made another Rule 8210 request for the same information, setting October 27, 2010 as the due date, but Applicants again failed to respond to this request. FINRA's Department of Enforcement then issued a Notice, pursuant to Rule 9552, stating that Applicants would be suspended in twenty-one days unless they complied with the request for information.<sup>6</sup>

On November 19, 2010, Applicants requested an expedited hearing, which stayed the suspensions until FINRA decided Applicants' appeal. A hearing was conducted by telephone on January 10, 2011, and FINRA issued its decision on March 25, 2011. In the decision, FINRA found, and Applicants do not deny, that Applicants failed to provide IFS's financial books and records to FINRA examiners, pursuant to requests made under Rule 8210. FINRA further found that Sweat's assertion about the effects his medical condition had on his ability to participate in the pending examination was not a defense and did not otherwise excuse Applicants from providing the requested information.

FINRA suspended Sweat from associating with a FINRA member firm in any capacity and suspended IFS from FINRA membership, with the suspensions to remain in effect until Applicants fully complied with FINRA's requests for information. FINRA further found that, if Applicants did not comply with the information requests within three months, Sweat's suspension would automatically convert into a bar and IFS's suspension would automatically convert into an expulsion. FINRA also ordered that Applicants, jointly and severally, pay costs of \$2,216.85 associated with the proceeding.

## II.

On April 1, 2011, Applicants filed an appeal with the Commission and requested a stay of their suspensions. Applicants' stay request, submitted by Sweat, did not dispute that Applicants failed to provide information. The request instead stated only that, "[a]t the time of the request I had suffered health complications associated with diabetes which prohibited me from providing the requested information. I am committed to providing the information to FINRA. Even though my health still remains a concern, I will gather the requested information and provide it to FINRA before their requested date of June 25, 2011." The Commission, pursuant to delegated authority, denied Applicants' stay request, finding, among other things, that there did not appear to be a strong likelihood that Applicants would succeed on appeal nor did Applicants appear likely to suffer irreparable harm given that the suspensions could end anytime before June 25, 2011 if Applicants complied with FINRA's requests to provide information before that date.

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<sup>6</sup> FINRA Rule 9552 provides that if a member or associated person fails to provide any information requested under FINRA's Rules, FINRA staff may provide written notice specifying the nature of the failure and stating that a failure to take corrective action within twenty-one days after service of the notice will result in a suspension.

The Commission subsequently issued a briefing order stating that Applicants' brief was due on May 23, 2011 and that, pursuant to Rule of Practice 180(c), failure to file a brief could result in dismissal of the proceeding. The Commission did not receive a brief from Applicants and accordingly dismissed their appeal on June 10, 2011. Applicants now ask the Commission to reconsider that dismissal because, they claim, their failure to file a brief was "due to illness."

We see no basis for reconsidering our dismissal of Applicants' petition for review. As noted earlier, reconsideration is an extraordinary remedy "designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence."<sup>7</sup> Applicants' motion fails to provide such grounds for reconsideration. Applicants provide no explanation for Sweat's alleged illness or how that illness affected Applicants' ability to file a brief in this matter. Applicants also filed their motion for reconsideration eleven days after the deadline for filing such motions without seeking an extension of time,<sup>8</sup> and the record provides no indication that Applicants have yet complied with FINRA's requests for information. Applicants' repeated failures to comply with regulatory requests for information and documents "indicate[] a risk to the regulatory system -- and the markets and investors it protects."<sup>9</sup>

Accordingly, IT IS ORDERED that the request of Kent D. Sweat and Intermountain Financial Services, Inc. for reconsideration be, and hereby is, DENIED.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>7</sup> *Perpetual Sec.*, 92 SEC Docket at 473.

<sup>8</sup> Commission Rule of Practice 470(b) (stating that motions for reconsideration "shall be filed within 10 days after service of the order complained of").

<sup>9</sup> *Morton Bruce Erenstein*, Exchange Act Rel. No. 56768 (Nov. 8, 2007), 91 SEC Docket 3114, 3128 (noting that a registered representative's failure to heed repeated warnings about his failure to respond to an information request "requir[ed] a sanction that will impress upon Erenstein the seriousness of his conduct and deter him from similar future misconduct"), *petition denied*, 316 F. App'x 865 (11th Cir. Sept. 16, 2008); *see also Paz Sec., Inc.*, Exchange Act Rel. No. 57656 (Apr. 11, 2008), 93 SEC Docket 5122 (sustaining NASD's imposition of a bar for applicants' failure to respond to repeated information requests), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).