

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SECURITIES CAPITAL CORPORATION
(CRD No. 22892),

Respondent.

Expedited Proceeding
No. FPI230003

STAR No. 20230790019

Hearing Officer–BEK

**EXPEDITED HEARING
PANEL DECISION**

October 5, 2023

For failing to file its annual audit report, Respondent is suspended, assessed a \$1,000 late fee, and ordered to pay costs. The suspension will convert to an expulsion if, within 30 days of this decision, Respondent does not pay the late fee and file the required report.

Appearances

For the Complainant: Michael Manning, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Michael A. Jones, President, Chairman, and Chief Executive Officer of Securities Capital Corporation

DECISION

I. Background

This expedited proceeding stems from FINRA’s issuance of a Notice of Suspension (“Notice”) to Respondent broker-dealer Securities Capital Corporation (“Securities Capital” or “the Firm”) for failing to file its 2022 annual audit report as required by the Securities Exchange Act of 1934 (“Exchange Act”) and FINRA Rules. When Respondent missed its May 2, 2023 filing deadline, FINRA issued the Notice, which informed Respondent that it would be suspended from FINRA membership and later expelled if the annual audit report was not filed by June 12, 2022. The Notice also assessed a \$1,000 late fee.¹ In response to the Notice,

¹ Joint Exhibit (“JX-__”) 2.

Respondent requested a hearing with the Office of Hearing Officers, which stayed the effectiveness of the Notice pending the outcome of the hearing.

The parties participated in a videoconference hearing before a FINRA Hearing Panel. Respondent stipulated that its annual audit report has not been filed.² Michael A. Jones, Respondent's representative and Chief Executive Officer ("CEO"), testified that this was due to his family members' serious medical issues that required his attention.³

For the reasons explained below, the Hearing Panel reinstates the suspension and fine imposed by the Notice. If Respondent does not file the required report within 30 days of the date of this decision, the suspension will automatically convert to an expulsion.

II. Findings of Fact and Conclusions of Law

A. The CEO's Family had Medical Issues

Respondent has been a FINRA member since 1989.⁴ Its office is in Birmingham, Alabama.⁵ Jones is Respondent's President, Chairman, and CEO.⁶ He has primary responsibility for completing and filing Respondent's annual audit report.⁷ His wife is Vice Chair of Securities Capital.⁸ Respondent has one associated representative.⁹

Respondent's annual audit report for 2022 was originally due on March 1, 2023.¹⁰ Due to the COVID-19 pandemic, the Securities and Exchange Commission ("SEC") granted Respondent a routine extension to file its annual audit report by April 1, 2023.¹¹ On March 24, Jones requested another extension, until May 1, 2023, because the "[F]irm's principal is hospitalized and unable to assist with the audit."¹² In response, Respondent was granted another extension until May 2, 2023, to file its annual audit report.¹³ On April 27, a few days before the annual audit report was due, Jones notified FINRA staff that the Firm needed more time to file

² Stipulations ("Stip.") ¶ 5.

³ Hearing Transcript ("Tr.") 78-84.

⁴ Stip. ¶ 1.

⁵ JX-1, at 5.

⁶ JX-1, at 1.

⁷ Tr. 91-92.

⁸ Tr. 90.

⁹ Tr. 91-92.

¹⁰ Tr. 25.

¹¹ *Id.*

¹² Complainant's Exhibit ("CX-__") 1.

¹³ CX-3.

its annual audit report.¹⁴ Jones requested an extension until May 31, 2023, based on his family members' medical issues that required his constant attention, rendering him "unable to assist with the audit."¹⁵ He also stated in a contemporaneous email that his family members' medical issues were only recently beginning to resolve.¹⁶ FINRA staff rejected this request based, in part, on (1) the change in circumstances—from Securities Capital's principal being hospitalized to family members' medical issues; (2) Jones's assertion that his family members' healing recently had begun; and (3) the Firm's history of late filings.¹⁷

At the hearing, Jones clarified that he needed the extension beyond May 2, 2023, because of his wife's and son's serious medical issues and his need to focus on their care.¹⁸ He also testified that Securities Capital continued to conduct business during this period with its one associated representative. Jones testified that, although this associate representative is designated as an Operations Professional, he did not believe this representative had any working knowledge of the audit process or the experience to properly supervise preparation of the annual audit report.¹⁹

B. Respondent Failed to File Its Annual Audit Report and Provides no Reason for Failing to Do So

The Hearing Panel finds Jones credible regarding his family's medical issues and his focus on their care in the early months of 2023, but he clearly erred when stating in his request for an extension until May 1, 2023, that the Firm's principal was hospitalized and unable to assist with the annual audit report. FINRA staff reasonably understood this to mean that Jones—the President, CEO, and Chairman—had been hospitalized and therefore was unable to assist with the annual audit report.²⁰ Yet, as explained at the hearing, it was Jones's family members who were hospitalized, not him.²¹ This change in circumstances – from the Firm's principal being hospitalized to the principal's family members being hospitalized and on the mend – was a key reason FINRA staff rejected Jones's request for an additional extension.²²

The Hearing Panel also finds that Jones failed to take seriously the requirement that the Firm had to timely file its annual audit report. While he explained his need to focus on his family's care in the early months of 2023, he failed to adequately explain why he could not

¹⁴ CX-5, at 4.

¹⁵ CX-6.

¹⁶ CX-5, at 1.

¹⁷ Tr. 35-36, 59-61; CX-8.

¹⁸ Tr. 30, 80-82.

¹⁹ Tr. 91-92, 93-95, 99-100.

²⁰ Tr. 58-59.

²¹ Tr. 86, 99-100.

²² Tr. 59-60.

provide some supervision of the audit process when his family started getting better, or why he could not direct his associate representative—an Operations Professional—to assist in that supervision.

Jones’s failure to take the filing of the Firm’s annual audit report seriously is exemplified by his continued failure to file the report even as time has passed. He did not complete the report by May 31, 2023, the date he sought in his second request for an extension based on his family’s medical issues. He also did not complete the report by July 10, the date originally scheduled for the hearing in this matter.²³ Indeed, on June 30, 2023, Respondent moved to continue the hearing on the representation that it would complete its annual audit report in the next ten to fourteen days.²⁴ Although I granted the motion and rescheduled the hearing for July 20, 2023, Respondent still did not complete the annual audit report by then.

On the morning of the rescheduled hearing, Enforcement submitted a motion to continue the hearing based on Jones’s representation that the Firm would file its annual audit report that day.²⁵ I promptly rescheduled the hearing for July 27, 2023. Yet again, Respondent did not file its annual audit report as represented, and the Hearing Panel held the hearing that day. At the hearing, Jones confirmed that the Firm’s auditor concluded the night before the hearing that Respondent did not meet its net capital requirements at the close of 2022.²⁶ Jones did not provide any information about when the Firm might file its annual audit report.

C. By Failing to File an Annual Audit Report, Respondent Violated Section 17(e) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010

Under Section 17(e) of the Exchange Act and Exchange Act Rule 17a-5, registered broker-dealers are required to file an annual financial report audited by an independent public accountant.²⁷ Respondent stipulates that its 2022 annual audit report was due on May 2, 2023, and was not filed.²⁸ The Hearing Panel therefore concludes that Respondent violated Section

²³ Tr. 85.

²⁴ Respondent’s Motion to Continue dated June 30, 2023.

²⁵ Enforcement’s Request for Continuance of Hearing Date dated July 20, 2023.

²⁶ Tr. 98. Broker-dealers are required to maintain, at all times, a minimum amount of net capital. *See* Rule 15c3-1 under the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-1.

²⁷ *See, e.g., Regulatory Operations v. TMR Bayhead Sec., LLC*, No. FPI180002, 2018 FINRA Discip. LEXIS 27, at *4 (OHO Sept. 10, 2018) (“Section 17(e) of the Securities Exchange Act of 1934 . . . and Rule 17a-5(d) thereunder require every registered broker-dealer to file annually a report audited by an independent public accountant.”), *modified*, Exchange Act Release No. 88006, 2020 SEC LEXIS 3103 (Jan. 17, 2020); *Regulatory Operations v. Fairbridge Cap. Mkts.*, No. FPI160004, 2016 FINRA Discip. LEXIS 44, at *8 (OHO July 11, 2016) (same).

²⁸ Stip. ¶¶ 4-5.

17(e) of the Exchange Act and Exchange Act Rule 17a-5. As a result, Respondent also violated FINRA Rule 2010.²⁹

III. Sanctions

The Hearing Panel has discretion to determine appropriate sanctions in expedited proceedings. Under FINRA Rule 9559(n), it “may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.”

Enforcement seeks immediate reinstatement of the suspension with an automatic expulsion if Respondent fails to file its annual audit report within 30 days of the Hearing Panel’s Decision. Enforcement also recommends imposition of the \$1,000 late fee imposed in the Notice.³⁰

In determining the appropriate sanction, the Hearing Panel considered the importance of timely filing an annual audit report. To that point, the SEC has described the reporting provisions as important in monitoring the financial status of broker-dealers and protecting investors.³¹ According to the SEC, the provisions “involve fundamental safeguards imposed for the protection of the investing public on those who wish to engage in the securities business.”³² “Reporting violations are therefore serious.”³³

Additionally, Jones offered no estimate on when the Firm’s annual audit report will be completed.

Based on these considerations, the Hearing Panel immediately reinstates the suspension and \$1,000 late fee imposed by the Notice. The suspension will convert to an automatic expulsion if Respondent does not file its annual audit report within 30 days after the date of this Decision. These sanctions are appropriately remedial and designed to impress upon Respondent and others the importance of timely filing their annual audit reports and to protect the investing public by reducing the likelihood of recurrent violations.³⁴

²⁹ FINRA Rule 2010 requires FINRA members to observe “high standards of commercial honor and just and equitable principles of trade.” *TMR Bayhead Sec.*, 2018 FINRA Discip. LEXIS 27, at *4 (“Failure to comply with Exchange Act Rule 17a-5 violates FINRA Rule 2010.”).

³⁰ Tr. 108-09.

³¹ *Gremo Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *14-15 (May 12, 2011).

³² *Id.* at *15 (quoting *Fox & Co. Inv., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *26-27 & n.50 (Oct. 28, 2005)).

³³ *Id.* (citing *Troy A. Wetter*, Exchange Act Release No. 33086, 1993 SEC LEXIS 2870, at *12 (Oct. 21, 1993) (finding applicant’s failure to timely file an annual audit report to be a serious reporting violation).

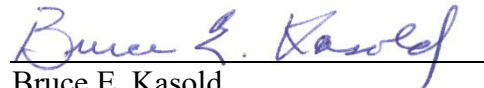
³⁴ *Cf. Gremo Invs., Inc.*, 2011 SEC LEXIS 1695, at *15 (upholding sanctions imposed by the FINRA hearing panel for failure to file an annual report by a PCAOB-registered firm “because they will impress upon the Firm and others

IV. Order

For failing to file its 2022 annual audit report, in violation of Section 17(e) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rule 2010, Securities Capital Corporation is suspended from FINRA membership and assessed a late fee of \$1,000. The suspension and late fee will be effective upon the issuance of this Decision.³⁵

The suspension will convert to an expulsion 30 days following the date of this Decision if Securities Capital has not filed its 2022 annual audit report and paid the late fee. If Securities Capital files its annual audit report and pays the late fee before it is expelled, then, pursuant to FINRA Rule 9552(f), it may file a written request for termination of the suspension on the grounds of full compliance with this Decision.

Finally, Securities Capital Corporation is ordered to pay costs of \$1,788 which includes an administrative fee of \$750 and the cost of the hearing transcript. The costs shall be due as of a date established by FINRA.



Bruce E. Kasold
Hearing Officer
For the Hearing Panel

Copies to:

Securities Capital Corporation c/o Michael A. Jones (via email, overnight courier, and first-class mail)
Michael Manning, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

the importance of filing annual reports that are audited by PCAOB-registered firms in compliance with the federal securities laws and protect the investing public by reducing the likelihood of any recurrence of a violation.”).

³⁵ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.