

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 66433 / February 21, 2012

Admin. Proc. File No. 3-14609

In the Matter of the Application of

WILLIAM J. MURPHY

and

CARL M. BIRKELBACH

For Review of Disciplinary Action Taken by

FINRA

ORDER DISMISSING
MURPHY'S APPLICATION
FOR REVIEW

On October 28, 2011, William J. Murphy, formerly registered as a general securities representative and principal with Birkelbach Investment Securities, Inc. ("BIS"), a FINRA member firm, and Carl M. Birkelbach, formerly registered as a general securities representative and principal, a municipal securities representative and principal, an options principal, and a financial and operations principal, and the president of the BIS, filed an application for review of a disciplinary action taken against them by the Financial Industry Regulatory Authority, Inc. ("FINRA"). On December 14, 2011, the Commission issued an Order Scheduling Briefs. The order stated that Murphy's brief in support of his application for review was due on January 13, 2012. The order further stated that, pursuant to Commission Rule of Practice 180(c), failure to file a brief could result in dismissal of the proceeding.¹

On January 13, 2012, the day Murphy's brief was due, Murphy's and Birkelbach's attorney of record, James J. Moylan, Esq., filed a Notice of Withdrawal of Counsel for Murphy, stating that "Moylan . . . hereby withdraws his Appearance on behalf of . . . Murphy." On January 19, 2012, Moylan filed an Amended Notice of Withdrawal of Counsel for Murphy, in which Moylan stated, among other things, that Murphy "will represent himself Pro Se, at the present time." The Commission has not yet received a brief from Murphy in support of his application for review.

¹ 17 C.F.R. § 201.180(c).

On February 3, 2011, FINRA filed the present "Motion to Dismiss Application for Review of William J. Murphy and to Stay Briefing Schedule" with the Commission, asking that the Commission dismiss Murphy's appeal pursuant to the Commission's Rule of Practice 180(c) for failure to file a brief. In its motion, FINRA represents that, on January 17, 2012, FINRA sent Murphy a letter in which it warned Murphy "that failure to file a brief in support of the application may result in dismissal of this review proceeding" and requested that Murphy contact FINRA counsel "immediately to apprise [FINRA counsel] of your intentions."

According to FINRA's motion, Murphy telephoned FINRA counsel on January 23, 2012, during which conversation "Murphy stated that he could not afford an attorney, but he did not state whether he planned to pursue or withdraw his application for review." FINRA further represents that, during the phone conversation, FINRA counsel "summarized for Murphy the current procedural posture of his application for review: that Murphy's appeal of the NAC's decision was pending before the Commission; that Murphy's motion to stay had been denied; that Moylan had withdrawn his appearance on behalf of Murphy; that Moylan had informed the Commission that Murphy was representing himself; and that Murphy's January 13, 2012 deadline to file his brief in support of his appeal had passed." FINRA represents that it then informed Murphy that, "if he did not take any action in the next few days, FINRA would move to have his appeal dismissed as abandoned."

Murphy has not filed a response to FINRA's motion with the Commission. Given these circumstances, the Commission finds that Murphy has abandoned his appeal.

Accordingly, IT IS ORDERED that FINRA's motion to dismiss Murphy from the proceedings be, and it hereby is, granted.

For the Commission by the Office of the General Counsel, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary