



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

## **NCLA Asks Sixth Circuit to Free FINRA Hostage from SEC’s ‘Hotel California’ Adjudication Regime**

*In re Eric S. Smith*

**Washington, DC (March 7, 2024)** – The New Civil Liberties Alliance has [petitioned](#) the U.S. Sixth Circuit Court of Appeals for a *writ of mandamus* to force the U.S. Securities and Exchange Commission to stop delaying its ruling on our client Eric S. Smith’s appeal of an unlawful Financial Industry Regulatory Authority disciplinary decision. FINRA banned Mr. Smith from the securities brokerage industry for life and heavily fined him based on faulty accusations and despite lacking any legal right to punish him in the first place. SEC has refused to rule on Mr. Smith’s subsequent appeal for over three years, depriving him of his livelihood, severely damaging his reputation and business prospects, and violating his statutory and constitutional rights. NCLA urges the Court to compel SEC to set aside FINRA’s disciplinary decision, or at least require the agency to rule on his appeal within 30 days.

FINRA cannot legally regulate or discipline Mr. Smith or his company, Consulting Services Support Corporation (CSSC), as they have never been FINRA members. Nevertheless, FINRA launched a formal disciplinary proceeding in 2017 against Mr. Smith and a brokerage firm CSSC owned, wrongly accusing him and the firm of misconduct dating back to 2010. A FINRA-assembled panel ultimately imposed a lifetime industry ban on Mr. Smith in January 2019, ordering him and the brokerage firm to jointly pay more than \$140,000 combined in restitution and costs for the proceeding. Mr. Smith appealed those illegitimate penalties to FINRA’s National Adjudicatory Council, which affirmed the panel’s decision and ordered him to pay another \$1,200 in appeal costs.

Mr. Smith subsequently appealed FINRA’s decision to SEC in October 2020, later requesting an oral argument. Although the briefing was completed nearly three years ago, the appeal remains undecided to this day. SEC’s own rules required the agency to issue a ruling on Mr. Smith’s appeal more than two years ago, yet SEC has granted itself *nine* consecutive 90-day extensions to decide the case. Keeping him in appellate limbo egregiously violates Mr. Smith’s constitutional right to due process of law and delays his ability to seek, if necessary, review of his case on the merits in an Article III court. There will be no end in sight, unless the Sixth Circuit grants relief.

Mr. Smith is not the only American—nor NCLA’s only client—who has been trapped in SEC’s interminable adjudicatory version of the Hotel California. At least a dozen similarly situated litigants are waiting for the agency to decide their years-old pending appeals of disciplinary sanctions imposed by FINRA and other self-regulatory organizations. In each case, SEC has repeatedly granted itself multiple extensions to decide these appeals.

### **NCLA released the following statements:**

“This case thoroughly debunks the myth that administrative adjudication produces efficiencies that justify tossing aside fundamental requirements of due process and fair play. NCLA’s client and others are routinely dragged through years and years of protracted and expensive non-judicial proceedings before they ever get a chance to be heard by a real judge in a real court—suffering severe reputational and financial harm while regulators dither. NCLA is asking the court to step in and put an end to this unjust, interminable process.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

“It is unbelievable that FINRA initiated an action against our client—who falls outside their regulatory purview. But it is unconscionable that despite this process taking the better part of a decade, he still has no final determination that would give him the opportunity to appeal to a real Article III court. Since FINRA and SEC demand enforcement targets play by their rules, maybe they should try doing the same.”

— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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