

Barred Broker Can't Sue FINRA For Opening Investigation

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Law360, Miami (February 10, 2016, 10:40 PM ET) -- An ex-broker can't bring suit against FINRA, a Florida federal judge said Tuesday, because the self-regulatory organization was carrying out its official duties when it decided to open an investigation into him after he sued former clients whose testimony got him barred from the industry.

Antony Turbeville was barred from being a broker after the [Financial Industry Regulatory Authority](#) found he improperly marketed risky securities to elderly clients. He filed suit against those clients over their testimony and FINRA opened another investigation, which in turn prompted Turbeville to sue FINRA.

U.S. District Judge James S. Moody Jr., however, said the organization is protected from the suit. FINRA and other self-regulatory organizations, which are private groups granted power to regulate their respective industry, have immunity when it comes to carrying out their duties, and individuals cannot bring private actions challenging the organizations' implementations of their own rules, Judge Moody said in an order dismissing the case.

“Turbeville’s claims relate to FINRA’s actions of conducting a disciplinary investigation against him and subsequently making that investigation public on BrokerCheck; these actions fall squarely within FINRA’s regulatory duties,” the order said. “As such, the claims against FINRA are barred by FINRA’s absolute regulatory immunity.”

FINRA filed a securities fraud suit against Turbeville in December 2009, accusing him of recommending risky collateralized mortgage obligations to elderly, unsophisticated investors. The organization found that he broke its rules and required him to pay more than \$400,000 in restitution, and barred him from

selling securities or associating with firms that sell securities, according to court documents.

He appealed the decision to FINRA's intermediate appellate body, which affirmed the previous ruling, and also filed suit against the elderly clients who testified against him in the prior action. FINRA began an investigation into the lawsuit and published a notice online, which Turbeville claims was to prevent him from clearing his name, the court documents said.

Turbeville eventually dropped the suit against the elderly clients and dropped his appeal of the regulatory action. He then filed this suit, which was removed to federal court in December.

In this most recent suit, he argues that FINRA defamed him by publishing the investigation notice on its website, and that the organization violated its own rules when it decided to investigate him over the suit he filed against the elderly ex-clients. He also argues that FINRA has no right to investigate him because he isn't registered with it, court documents said.

However, Judge Moody said FINRA clearly stated its investigation was about his prior involvement with the elderly clients and whether his suit violated its rules, the Tuesday order said.

Representatives for Turbeville declined to comment Wednesday.

David Mandel, of Mandel & Mandel LLP, who represented FINRA in the matter, told Law360 on Wednesday that he was happy with the court's decision.

"Mr. Turbeville's attempt to sue the regulator that caught him defrauding elderly investors was a spectacular failure. And rightly so," Mandel said. "Needless to say, we are extremely pleased with the result."

FINRA was represented by David Mandel of Mandel & Mandel LLP.

Turbeville was represented by Thomas C. Saunders and J. Matthew Kelly of the Saunders Law Group.

The case is Turbeville v. Financial Industry Regulatory Authority et al, case number [8:15-cv-02920](#), in the U.S. District Court for the Middle District of Florida, Tampa Division.

— Editing by Ben Guilfooy.

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