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11th Circuit says ex-broker's lawsuit against FINRA barred

Dena Aubin

(Reuters) - A federal appeals court has declined to revive a former broker's lawsuit against the Financial Industry Regulatory Authority, the securities industry's self-regulatory body, saying no private right of action exists to sue the regulator.

The former Florida broker, Antony Turbeville, had sued FINRA for defamation, but a unanimous three-judge panel of the 11th U.S. Circuit Court of Appeals said on Wednesday that FINRA's administrative appeals process is the sole avenue for Turbeville to challenge its actions.

The decision ends a long-running dispute between FINRA and the ex-broker, who was barred from the securities industry by the regulatory body in 2012 for allegedly selling complex mortgage-related securities to elderly investors without explaining the risks. Turbeville has denied the charges.

"This case has been like a litigation vampire, very hard to kill," said David Mandel, who represented FINRA. "We're very pleased that it looks like the Eleventh Circuit has driven a well-deserved stake through its heart."

An attorney for Turbeville could not immediately be reached for comment.

FINRA had disciplined Turbeville and fined his Lakeland, Florida-based securities firm, Brookstone Securities, \$1 million in 2012, finding that he sold clients unsuitable securities and led them to believe that they were government-guaranteed bonds.

Turbeville appealed the decision to FINRA's appeals board and also sued elderly ex-customers who testified against him in the disciplinary proceedings for defamation.

FINRA then launched a second investigation into Turbeville and filed a Wells notice against him in 2013, saying it had reached a preliminary finding that he was trying to intimidate witnesses in the 2012 disciplinary action. A Wells notice lets an individual know an enforcement action may be filed and gives him a chance to respond.

Wells notices become part of the public record at FINRA and are disclosed when the public inquires about a broker's background.

Turbeville disputed FINRA's findings and it later removed the Wells notice from Turbeville's records.

Turbeville then sued FINRA in 2015 in Florida state court, saying the Wells notice defamed him and he was not subject to FINRA's authority when the notice was filed because he was no longer in the securities industry.

FINRA removed the lawsuit to Tampa federal court, where it was dismissed in 2016 by U.S. District Judge James Moody on the grounds that Congress created no private right of action against self-regulatory organizations such as FINRA.

In an appeal, Turbeville said he agreed that no private right of action exists for FINRA actions taken pursuant to its regulatory authority, but FINRA's second investigation exceeded its authority because he was not subject to it at the time.

In response, FINRA said the second disciplinary investigation was related to the 2012 action, which was still pending on appeal when Turbeville sued the witnesses. The same witnesses might have been called to testify a second time if they were not too intimidated to appear, FINRA said.

In Wednesday's opinion, Circuit Judge Gerald Tjoflat said Turbeville's lawsuit was a challenge to FINRA's application of its rules and jurisdiction and implies a private right of action against it. The U.S. Securities Exchange Act, which established the broker regulatory scheme, created no such right, Tjoflat wrote in an opinion joined by Circuit Judge Robin Rosenbaum and District Judge Danny Reeves sitting by designation.

The case is: Antony Turbeville v Financial Industry Regulatory Authority, 11th U.S. Circuit Court of Appeals, No 16-11083

For the plaintiff/appellant: Thomas Saunders at Saunders Law Group

For the defendant/appellee: David Mandel at Mandel & Mandel

---- **Index References** ----

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