

No. 24-1189

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

<b>FILED</b> Aug 5, 2024 KELLY L. STEPHENS, Clerk
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In re: ERIC S. SMITH,

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O R D E R

Petitioner.

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Before: STRANCH, BUSH, and MATHIS, Circuit Judges.

Eric S. Smith petitions for a writ of mandamus directing the Securities and Exchange Commission to rule on his October 2020 appeal from a September 2020 decision by the Financial Industry Regulatory Authority (“FINRA”) National Adjudicatory Counsel (“NAC”). That decision affirmed a FINRA hearing panel’s decision to bar Smith from the industry for life because it determined he violated Section 10(b) of the Securities and Exchange Act of 1934.

“[We have] jurisdiction under the All Writs Act to issue writs, including writs of mandamus, in aid of our jurisdiction.” *In re Sutton*, 652 F.3d 678, 679 (6th Cir. 2011) (per curiam) (citing 28 U.S.C. § 1651). That jurisdiction includes the authority to compel the SEC to act. 5 U.S.C. § 706(1); *see also* 15 U.S.C. § 78y(a)(1) (providing for direct review by the courts of appeals of SEC decisions on applications for review); *In re Howard*, 570 F.3d 752, 756 (6th Cir. 2009) (recognizing the authority to compel agency action when such action would be reviewable in this court). Indeed, federal law mandates that courts “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

When examining an agency’s delay, we consider, among other things, whether the agency has been given reasonable time to make decisions, whether “human health and welfare are at stake,” and “the nature and extent of the interests prejudiced by delay[.]” *Barrios Garcia v. U.S.*

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*Dep't of Homeland Sec.*, 25 F.4th 430, 451–52 (6th Cir. 2022) (quoting *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984)). These considerations support Smith.

SEC Rule of Practice 900 presumes that decisions on applications for review from FINRA decisions “will be issued within eight months from the completion of briefing,” or ten months “[i]f the Commission determines that the complexity of the issues presented . . . warrants additional time.” 17 C.F.R. § 201.900(a)(1)(iii). The parties completed briefing on Smith’s application more than 39 months ago. Smith’s lifetime bar puts his individual welfare and reputation at stake, and the ongoing delay hinders his ability to earn a living. Meanwhile, the SEC has granted itself ten discretionary extensions of time totaling more than 900 days. Because there is no obvious explanation for the significant delay, a response from the SEC would assist the court in resolving this mandamus petition.

Accordingly, Respondent Securities and Exchange Commission is **ORDERED** to respond to the petition within thirty (30) days of the date of this order. Fed. R. App. P. 21(a)(1), (b)(1). Thereafter, the mandamus petition will be resubmitted to the court.

ENTERED BY ORDER OF THE COURT



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Kelly L. Stephens, Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Kelly L. Stephens  
Clerk

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Filed: August 05, 2024

Mr. Dominick V. Freda  
Securities and Exchange Commission  
Office of the General Counsel  
100 F Street, N.E.  
Mail Stop 9040  
Washington, DC 20549

Re: Case No. 24-1189, *In re: Eric Smith*  
Originating Case No. SEC 3-20127

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Jill E Colyer  
Case Management Specialist  
Direct Dial No. 513-564-7024

cc: Mr. Russell G. Ryan

Enclosure