

No. 24-1189

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

<p><b>FILED</b></p> <p>Nov 8, 2024</p> <p>KELLY L. STEPHENS, Clerk</p>
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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 related to his October 2020 appeal to the Securities and Exchange Commission from the Financial Industry Regulatory Authority (“FINRA”) National Adjudicatory Counsel’s (“NAC”) September 2020 decision affirming a FINRA hearing panel’s January 2019 ruling that imposed a lifetime industry bar on Smith for violations of Section 10(b) of the Securities and Exchange Act of 1934. We directed the SEC to respond.

Although the SEC represents that Smith’s appeal has since been decided, rendering this petition moot, Smith sought more than the resolution of his appeal in the petition. Mandamus is not warranted, however. “As the writ is one of ‘the most potent weapons in the judicial arsenal,’ three conditions [must] be satisfied before it may issue,” including that “‘the party seeking issuance of the writ must have no other adequate means to attain the relief he desires’—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (alteration in original) (first quoting *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.* 426 U.S. 394, 403 (1976), then quoting *Ex parte Fahey*, 332 U.S. 258, 259–260 (1947)). Smith cannot satisfy this condition.

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“A person aggrieved by a final order of the [SEC] . . . may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business . . . .” 15 U.S.C. § 78y(a)(1). This is an adequate alternative notwithstanding that Smith has already waited years for a final decision; “mandamus is not intended to substitute for appeal after a final judgment,” *In re Pros. Direct Ins. Co.*, 578 F.3d 432, 437 (6th Cir. 2009), and this court can expedite its consideration if warranted.

Accordingly, the petition for a writ of mandamus is **DENIED**.

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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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. Judgment to follow.

Sincerely yours,

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

cc: Ms. Kinikia D. Essix

Enclosure

No mandate to issue