UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION

Frank Harmon Black and Southeast Investments, N.C., Inc. v. Securities and Exchange Commission and Financial Industry Regulatory Authority

Civil Action No. 3:23-CV-00709-MEO-DCK · No. 3:23-CV-00709-MEO-DCK · Decided March 24, 2026

SUMMARY

The United States District Court for the Western District of North Carolina grants FINRA's motion to dismiss for lack of subject-matter jurisdiction and denies the parties' pending summary-judgment motions and the plaintiffs' motion for a speedy hearing as moot. The court concludes that the Exchange Act's statutory review scheme, together with the completion of the FINRA and SEC proceedings and the availability of review in the Fourth Circuit, deprives the district court of jurisdiction over the plaintiffs' constitutional challenges to FINRA and SEC adjudication. The action concerns Appointments Clause, nondelegation, due process, and jury-trial challenges.

CASE DETAILS

COURT	United States District Court for the Western District of North Carolina, Charlotte Division
WRITING FOR THE COURT	Matthew E. Orso
JURISDICTION	United States District Court for the Western District of North Carolina, Charlotte Division
DECIDED	March 24, 2026
DOCKET	3:23-CV-00709-MEO-DCK
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs brought constitutional challenges to FINRA's and the SEC's administrative adjudicatory scheme and sought declaratory, injunctive, and monetary relief. After the SEC proceedings concluded and review proceeded in the Fourth Circuit, FINRA moved to dismiss for lack of subject-matter jurisdiction.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, the plaintiff bears the burden of establishing subject-matter jurisdiction; lack of subject-matter jurisdiction may be raised at any time, and the action must be dismissed when jurisdiction is lacking.

PRECEDENTIAL VALUE	unpublished
PARTIES	Frank Harmon Black, Southeast Investments, N.C., Inc. v. Securities and Exchange Commission, Financial Industry Regulatory Authority

TOPICS

subject matter jurisdiction · motions to dismiss · judicial review of agency action · administrative law · appellate jurisdiction

PRACTICE AREAS

federal jurisdiction · administrative law · securities regulation · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether the Exchange Act's administrative-review and court-of-appeals review scheme deprived the district court of subject-matter jurisdiction over plaintiffs' structural constitutional challenges to FINRA and SEC adjudication.
2. Whether the timing and posture of the completed administrative proceedings distinguished plaintiffs' claims from the collateral-review exception recognized in Axon Enterprise, Inc. v. Federal Trade Commission and Free Enterprise Fund v. Public Company Accounting Oversight Board.
3. Whether plaintiffs' request for nominal damages supplied a basis for district-court jurisdiction despite the Exchange Act review scheme and asserted immunity of FINRA and the SEC.

HOLDINGS

1. The Exchange Act's statutory review scheme, under which agency proceedings are followed by judicial review in the appropriate court of appeals, deprived the district court of jurisdiction because plaintiffs' agency proceedings had concluded and their constitutional claims could receive meaningful review in the Fourth Circuit.
2. Plaintiffs' jury-trial claim, as well as their Appointments Clause and private-nondelegation claims, constituted structural constitutional challenges materially similar to those recognized in Axon and Free Enterprise Fund.
3. Plaintiffs' damages theory did not provide a basis for proceeding because the SEC and FINRA are immune from the asserted damages claims for their regulatory conduct.

KEY QUOTATIONS

> *"Plaintiffs have moved past FINRA's and the SEC's proceedings such that any injury of "subjection to an illegitimate proceeding, led by an illegitimate decisionmaker" has already occurred, and Plaintiffs may now challenge the proceedings before an Article III court—the Fourth Circuit."* (Discussion, section III.B)

> *"A proceeding that has already happened cannot be undone."* (Discussion, section III.C)

FACTUAL BACKGROUND

FINRA commenced disciplinary proceedings against Black and Southeast Investments in 2015 and ultimately imposed fines and permanently barred Black from registering with FINRA. The SEC later affirmed in part, set aside in part, and remanded in part FINRA's decision, reducing the fine and lifting the lifetime bar. By the time of the district court's ruling, FINRA and SEC proceedings had ended, and plaintiffs' challenges to the SEC's orders were pending before the Fourth Circuit.

PROCEDURAL HISTORY

FINRA disciplined Black and Southeast Investments, imposing a lifetime bar and monetary fines. The SEC later set aside the lifetime bar, reduced the fine, and remanded part of the matter to FINRA; FINRA subsequently dismissed the remanded portion. Plaintiffs filed petitions for review in the Fourth Circuit, and the SEC ultimately denied reconsideration and reissued its prior order for purposes of appellate review. The district court granted FINRA's Rule 12(b)(1) motion, denied all summary-judgment and speedy-hearing motions as moot, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ware, 414 U.S. 117 (1973)
- Black v. SEC, 125 F.4th 541 (4th Cir. 2025)
- Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994)
- Mansfield, C. & L.M.R. Co. v. Swan, 111 U.S. 379 (1884)
- Adams v. Bain, 697 F.2d 1213 (4th Cir. 1982)
- Axon Enter., Inc. v. Fed. Trade Comm'n, 598 U.S. 175 (2023)
- Thunder Basin Coal Co. v. Reich, 510 U.S. 200 (1994)
- Bennett v. U.S. Sec. & Exch. Comm'n, 844 F.3d 174 (4th Cir. 2016)
- Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477 (2010)
- SEC v. Jarkesy, 603 U.S. 109 (2024)
- Barbara v. New York Stock Exch., Inc., 99 F.3d 49 (2d Cir. 1996)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, 578 U.S. 374 (2016)
- Ray v. Fin. Indus. Regul. Auth., Inc., 2021 WL 3260071 (W.D.N.C. June 25, 2021), adopted, 2021 WL 3234620 (W.D.N.C. July 29, 2021)
- Howes v. Fin. Indus. Regul. Auth., Inc., 2023 WL 2213688 (D. Md. Feb. 24, 2023)
- Alpine Sec. Corp. v. Fin. Indus. Regul. Auth., 121 F.4th 1314 (D.C. Cir. 2024), cert. denied, 145 S. Ct. 2751 (2025)
- Nat'l Ass'n of Immigr. Judges v. Owen, 139 F.4th 293 (4th Cir. 2025)
- Nat'l Ass'n of Immigr. Judges v. Owen, 160 F.4th 100 (4th Cir. 2025)