

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 88953 / May 26, 2020

Admin. Proc. File No. 3-19216

In the Matter of the Application of  
  
DUSTIN TYLOR AIGUIER  
  
For Review of Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

**Jurisdiction to Review Association Action**

Associated person of FINRA member firm filed an application for review of FINRA action denying request to reopen arbitration proceeding that had been closed by award. *Held*, application for review is dismissed.

APPEARANCES:

*Michael Bessette*, HLBS Law, for Dustin Tylor Aiguier.

*Alan Lawhead, Jennifer Brooks, and Megan Rauch* for the Financial Industry Regulatory Authority, Inc.

Appeal filed: June 21, 2019  
Last brief received: October 4, 2019

Dustin Tylor Aiguier filed a claim in FINRA’s arbitration forum seeking to expunge two customer complaints from his Central Registration Depository (“CRD”) records. The arbitrator denied expungement relief. Ten months later, Aiguier moved to reopen the arbitration hearing after learning of certain purportedly exculpatory documents. FINRA denied Aiguier’s request because it found that the motion did not satisfy FINRA’s rule governing post-hearing submissions. Aiguier now asks us to set aside FINRA’s action and to order FINRA to reopen the proceeding so he can present the allegedly newly discovered evidence to the arbitrator in a new hearing. We dismiss the application for review because we lack jurisdiction over Aiguier’s application under Section 19(d) of the Securities Exchange Act of 1934.<sup>1</sup>

## I. Background

Aiguier was a registered representative of NYLife Securities LLC, a FINRA member firm, from November 2004 until NYLife terminated him in June 2015. In January 2013, one of Aiguier’s clients complained that Aiguier “misrepresented” a universal life insurance policy and that it was unsuitable. In September 2015, another client complained that Aiguier omitted information in inducing her purchase of a variable annuity. These complaints were reported in FINRA’s CRD and BrokerCheck.<sup>2</sup> FINRA’s rules permit representatives to seek expungement in its arbitration forum of certain information reported in CRD and BrokerCheck and set forth the procedures arbitrators must follow before issuing an award granting expungement relief.<sup>3</sup>

In September 2017, Aiguier filed two statements of claim in FINRA’s arbitration forum—later consolidated into a single case—against NYLife requesting expungement of these complaints. NYLife opposed expungement and asked the arbitrator to dismiss the statements of claim. Several months before the hearing, Aiguier requested certain discovery from NYLife about the underlying customer disputes, and NYLife produced responsive discovery. On May 20, 2018, the day before the merits hearing was to begin, Aiguier received what he claims were “exculpatory documents that [NYLife] failed to produce.” The arbitrator gave Aiguier additional time to review those materials, but denied his request to compel NYLife to comply with its discovery obligations on the ground that NYLife had already done so. After holding the merits hearing, the arbitrator issued a written award denying expungement of the two customer complaints on July 9, 2018. FINRA then closed Aiguier’s expungement case.

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<sup>1</sup> See 15 U.S.C. § 78s(d).

<sup>2</sup> BrokerCheck is a free online tool, available at <http://brokercheck.finra.org>, that enables public investors to research the professional backgrounds of current and former FINRA-registered broker-dealers and their representatives, as well as investment adviser firms and their representatives. The information contained in BrokerCheck about broker-dealers and their representatives is derived from FINRA’s CRD system, the securities industry’s online registration and licensing database.

<sup>3</sup> See FINRA Rules 2080, 12805, 13805; *Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure to Establish Procedures for Arbitrators to Follow When Considering Requests for Expungement Relief*, Exchange Act Release No. 58886, 73 Fed. Reg. 66,086, 2008 WL 4808789 (Nov. 6, 2008).

Aiguier later commenced a separate arbitration against a branch manager of NYLife concerning the events leading to his termination.<sup>4</sup> NYLife produced discovery in that case that Aiguier considered exculpatory and probative of the expungement requests that were denied in his earlier arbitration. On May 7, 2019, Aiguier asked FINRA to reopen the earlier arbitration hearing so he could “supplement the record with the newly discovered evidence” and obtain a new hearing and award. Although FINRA Rule 13905 provides “limited circumstances” under which parties may “submit documents to arbitrator(s) in cases that have been closed,”<sup>5</sup> Aiguier did not cite that rule in his motion. Instead, Aiguier stated that FINRA’s rules were “silent” about requesting a new hearing after an award and relied on state-law authority permitting judges to order new trials or relief from judgment based on newly discovered evidence. Aiguier does not contend that he sought to have the earlier arbitration award overturned in court.

On May 22, 2019, FINRA advised Aiguier that “the Director of Dispute Resolution has determined that” Aiguier’s motion “does not comply with the grounds enumerated in Rule 13905.” Aiguier timely filed an application for review of that determination. We directed the parties to address whether we have jurisdiction to review Aiguier’s application.<sup>6</sup>

## II. Analysis

Action by a self-regulatory organization (“SRO”) such as FINRA “is not reviewable merely because it adversely affects the applicant.”<sup>7</sup> Rather, Exchange Act Section 19(d)(2) governs our jurisdiction to review SRO action.<sup>8</sup> Section 19(d)(2) authorizes us to review such actions only in specific circumstances, including, as relevant here, if that action “prohibits or limits any person in respect to access to services offered by [the SRO].”<sup>9</sup>

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<sup>4</sup> According to BrokerCheck, *see supra* note 2, NYLIFE terminated Aiguier “based on review of a recommended annuity purchase which did not accurately identify the source used to fund the purchase or surrender charges incurred. The firm and Mr. Aiguier have conflicting viewpoints as to what transpired with respect to the processing of the transaction.”

<sup>5</sup> That rule enumerates three such “limited circumstances”: (1) as ordered by a court; (2) “at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award”; and (3) “if all parties agree and submit within 10 days of . . . service of an award or . . . notice that a matter has been closed.” FINRA Rule 13905.

<sup>6</sup> *Dustin Tylor Aiguier*, Exchange Act Release No. 86434, 2019 WL 3302603, at \*1 (July 23, 2019).

<sup>7</sup> *Sky Capital LLC*, Exchange Act Release No. 55828, 2007 WL 1559228, at \*3 (May 30, 2007) (holding that a FINRA examination that has not “resulted to date in any enforcement action” is not “disciplinary action, let alone a final sanction,” for purposes of Section 19(d)).

<sup>8</sup> 15 U.S.C. § 78s(d)(2).

<sup>9</sup> *Id.* The Exchange Act provides three other jurisdictional bases for Commission review of an SRO action, *see id.*, but Aiguier states that these alternate bases “are not applicable to this case.” *See Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at \*3 n.18

Aiguier contends that his appeal fits within that provision because FINRA limited his access to its arbitration service by “refus[ing] to submit [his] motion to the panel” and thus denied him a decision by the arbitrator on the relief he requested. But denying such an attempt to obtain a new hearing after an arbitration award does not constitute a limitation of access to FINRA’s arbitration service under Section 19(d)(2).

FINRA accepted Aiguier’s statement of claim and allowed him to access its arbitration forum. Aiguier participated in that service by propounding discovery requests against NYLife, filing motions with the arbitrator, obtaining a continuance of the hearing to consider newly discovered evidence, attending the hearing, and obtaining an award. Although Aiguier claims he did not have the benefit of certain documents and that this resulted in adverse rulings, Aiguier’s objection to the evidentiary basis for the award and the process by which the arbitrator reached a decision does not change the fact that he accessed FINRA’s arbitration service.

Indeed, we recently found in *John Boone Kincaid III* that we lacked jurisdiction to review a similar case where the applicant sought to challenge FINRA’s decision not to reopen an arbitration proceeding after an award.<sup>10</sup> Kincaid “challenge[d] FINRA’s refusal to reopen his case so that he can ‘resubmit his request for expungement in a new proceeding with FINRA Dispute Resolution.’”<sup>11</sup> We found no prohibition or limitation of access there because FINRA “did not limit Kincaid’s access to its arbitration forum but rather provided Kincaid with access to that service,” and because granting his requested relief would require us to “set aside the award” and would result in “an otherwise impermissible collateral attack on an arbitration award.”<sup>12</sup>

So too here. Aiguier accessed FINRA’s arbitration forum. FINRA Rule 13905 allows parties to submit documents to an arbitrator in cases that have been closed by an award, but only under limited circumstances not applicable here.<sup>13</sup> Aiguier objects that FINRA denied him access to arbitration by refusing to order a new hearing, but he concedes that FINRA has not otherwise adopted “procedures for reopening the record once the award has been rendered.” That FINRA did not reopen the hearing does not change the fact that he accessed the arbitration service. His claim that FINRA should have reopened the hearing is a merits question about

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(July 15, 2016) (“We will not exercise jurisdiction on a basis [applicants] disclaim.”), *aff’d sub nom. Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018).

<sup>10</sup> See *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at \*3 (Oct. 22, 2019).

<sup>11</sup> *Id.* at \*5.

<sup>12</sup> *Id.* at \*3, 5 (explaining that the only path for setting aside an adverse award and granting access to a “new trial” is through vacatur of the award in court).

<sup>13</sup> See *supra* note 5.

whether FINRA properly implemented that service in a manner consistent with its rules, and arguments regarding the merits do not create jurisdiction under Section 19(d)(2).<sup>14</sup>

Aiguier disputes that he is seeking review of, or an order overturning, the arbitration award. Instead, he says he is appealing to the Commission for an order requiring FINRA to grant him a “new trial” where he can “present to the arbitration panel [new] fact[s].” But granting his requested relief would require us to set aside the award.<sup>15</sup> Congress has not authorized us to reopen an arbitration proceeding that has resulted in an award and grant a new trial. The “exclusive remedy for challenging acts that taint an arbitration award’ rendered by a FINRA arbitrator is to move to vacate, modify, or correct the award in court under the Federal Arbitration Act.”<sup>16</sup> We have no basis for exercising jurisdiction over Aiguier’s appeal.

We therefore dismiss the application for review. An appropriate order will issue.<sup>17</sup>

By the Commission (Chairman CLAYTON and Commissioners PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman  
Secretary

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<sup>14</sup> See *Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 WL 2338414, at \*4 (June 3, 2019) (finding no jurisdiction over purported denial of access to services and noting that “arguments regarding the merits . . . do not create jurisdiction for us under Exchange Act Section 19(d) to entertain [the] application for review of the actions FINRA took”); *Orbixa Techs., Inc.*, Exchange Act Release No. 70893, 2013 WL 6044106, at \*5 n.20 (Nov. 15, 2013) (recognizing that, because the Commission lacked jurisdiction under Section 19(d), it lacked the ability to review applicant’s contention that SRO violated Exchange Act rules); cf. *Kincaid*, 2019 WL 5445514, at \*3 (finding that we lacked jurisdiction despite applicant’s claim that FINRA failed to “enforce its rules,” because “parties cannot re-frame their argument to make an otherwise impermissible collateral attack on an arbitration award”).

<sup>15</sup> *Kincaid*, 2019 WL 5445514, at \*5 (noting our lack of authority to set aside an arbitration award in reasoning that we lack jurisdiction under Section 19(d)).

<sup>16</sup> *Id.* at \*3.

<sup>17</sup> We have considered all of the parties’ contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
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DUSTIN TYLOR AIGUIER  
  
For Review of Action Taken by  
  
FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY  
REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the application for review filed by Dustin Tylor Aiguier is dismissed.

By the Commission.

Vanessa A. Countryman  
Secretary