HARD COPY

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May 11, 2018

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Mail Stop 1090 – Room # 10915
Washington
DC 20549

By Fax (703) 813—9793 & Certified Mail R.R.R.

Dear Sirs,

Administrative Proceeding File No. 3—17734 (On Remand)
Application for Review of Action Taken by FINRA

Please find enclosed:

1. Cover Letter;
2. Applicant's Reply Brief; and
3. Certification of Service.

A copy of the above documents has been served on the SEC and FINRA by fax and Certified Mail R.R.R.

My address is [redacted], NJ [redacted]. My telephone number is ([redacted].

Yours faithfully,

Keith P. Sequeira
Applicant

Copy by Fax (202) 728—8264 & Certified Mail R.R.R to:
FINRA, Office of General Counsel.

United States of America
before the
Securities and Exchange Commission

Administrative Proceeding File No. 3-17734 (On Remand)

In the Matter of the Application of:	
Keith Patrick Sequeira	
For Review of Action Taken by:	
FINRA	

Applicant's Reply Brief

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Applicant respectfully submits this Reply Brief on Remand ("Rb1") in further support of his application to the SEC for review of the action taken against him by FINRA.[1] He repeats the facts, arguments, and references, set forth in Applicant's Remand Brief dated March 28, 2018 ("Arb1").

I. Introductory Statement.

FINRA – by Order[14] – characterized Arbitration II as a "disciplinary proceeding" (Cr 333). FINRA suspended and permanently barred Applicant "from associating in any capacity with any FINRA member firm" (Cr 609 et seq.). FINRA made findings to support the "disciplinary" sanctions ("Sanctions") imposed upon Applicant (Arb1 pp.10-11, 33(1)-(7)). FINRA thus caused Applicant the loss of his livelihood (Arb1 pp.8-9, ¶¶23-25). FINRA <u>now</u> argues that the Sanctions imposed upon Applicant were not disciplinary but "moot" (Frb2) as were FINRA's findings and conclusions in support of the Sanctions.

Applicant respectfully reminds the SEC of the fruit of the poisonous tree doctrine. The so-called "mandatory" Arbitration Clause was "unenforceable". FINRA nevertheless engaged in Impeachable Actions[2]. FINRA <u>did</u> compel Arbitration I & II. FINRA <u>did</u> suspend Applicant. FINRA <u>did</u> permanently bar Applicant. FINRA

[1] References to "FINRA" (Arb1, p.1, n.1) include references to Megan Rauch.

did cause Applicant to resign. FINRA did cause Applicant the loss of his livelihood. That bell cannot be unrung. Not now. Not ever.

II. FINRA's actions were ultra vires and void and impeachable and fraudulent.

A. FINRA did not deny that its Impeachable Actions[2] were "void for lack of jurisdiction"[3].

It is well-settled that "on every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes".[4] In fact, "[t]he requirement that jurisdiction be established as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without

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[2] "Impeachable Actions" refers to intentional acts by FINRA – directly or in collusion with – Wells Fargo Advisors, LLC ("Wells") and Lubiner, Schmidt & Palumbo, LLC ("LSP") to:

(a) compel Applicant to Arbitration I (Arb1 p.5, n.12);

(b) issue an Award against Applicant and in favor of Wells (Arb1 p.6, ¶10);

(c) initiate a "disciplinary proceeding" (Arb1 p.8, ¶21) (Arbitration II) (Arb1 p.8, n.22); and, thereafter,

(d) suspend and permanently bar Applicant "from associating in any capacity with any FINRA member firm" (Arb1 p.8, ¶22).

[3] *Berger v. Paterson Veterans Taxi,* 244 N.J. Super. 200, 205 (App. Div. 1990) (a judgment void for lack of jurisdiction "must ordinarily be set aside"); *NFI Ind. v. WSW Real Estate,* 102 A.3d 953, 956 (N.J. App. Div. 2014) (same).

[4] *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Great Southern Fire Proof Hotel Co. v. Jones,* 177 U. S. 449, 453 (1900))(emphasis added).

exception.'".[5] FINRA did not "establish" that it had jurisdiction with respect to the Impeachable Actions. Nor could it. It had no jurisdiction at all.

B. FINRA did not brief the issue of jurisdiction, which, therefore, is deemed waived.

FINRA has not briefed the issue of jurisdiction which is deemed waived. "[A]n issue not briefed, as is the case here, is deemed waived." *Liebling v. Garden State Indem.*, 337 N.J. Super. 447, 451 (App. Div.), certif. denied, 169 N.J. 606 (2001) (quoting *Matter of Bloomingdale Convalescent Ctr.*, 233 N.J. Super. 46, 48 n. 1, 558 A.2d 19 (App. Div. 1989).

C. FINRA relied upon a so-called "mandatory" Arbitration Clause which was "unenforceable".

FINRA relied upon a so-called "mandatory arbitration clause" (D7)[6] in the Note. The Arbitration Clause (Arb1 p.5, ¶8) was "unenforceable"[7] pursuant to both *Atalese* (State Court) and *Moon*[8] (Federal Court). These are the facts. They have not been disputed.

D. FINRA's Impeachable Actions are fraudulent AND outside its statutorily-delegated authority.

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[5] *Steel, supra,* 523 U.S. at 95 (quoting *Mansfield, C. & L. M. R. Co.* v. *Swan,* 111 U. S. 379, 382 (1884)).

[6] "D" references are to FINRA's "Decision" dated November 18, 2016 (See, "Certified Record" or "Cr" at 609 et seq.).

[7] *Atalese v. U.S. Legal Serv. Group*, 219 N.J. 430, 436 (2014), cert. denied, _U.S. _, 135 S. Ct. 2804, 192 L. Ed. 2d 847 (2015).

[8] *Moon v. Breathless Inc.,* 868 F.3d 209 (3d Cir. 2017) interpreting New Jersey law.

FINRA's Impeachable Actions were fraudulent for the reasons discussed herein. Notwithstanding its prolix musings in Frb[9], further, FINRA clearly acted outside the "regulatory or disciplinary functions" that have been "statutorily-delegated" to FINRA by the Securities Exchange Act, 15 U.S.C. §78a et seq. FINRA does not have immunity for its Impeachable Actions.

III. FINRA's Impeachable Actions were fraudulent and violated the NJCFA[10] and caused Applicant the loss of his livelihood and a deprivation of his constitutional right to sue in court.

A. Common Law Fraud

To state a claim for common law fraud, the following five elements must be pled: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.[11]

FINRA claimed that it had jurisdiction to arbitrate Wells' Note claims and – based upon that continuing misrepresentation –

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[9] "Frb" refers to FINRA's Remand Brief dated April 27,2018 in Opposition to the Application for Review.

[10] "NJCFA" refers to the New Jersey Consumer Fraud Act, N.J.S.A. §56:8-1 et seq.

[11] *Gennari v. Weichert Co. Realtors,* 148 N.J. 582, 610, 691 A.2d 350 (1997) (citing *Jewish Ctr. of Sussex County v. Whale,* 86 N.J. 619, 624-25, 432 A.2d 521 (1981)).

compelled arbitration[12] (Arb1 p.5, ¶¶8–9) and engaged, sequentially,[13] in the other Impeachable Actions discussed herein (Arb1 pp.6–8, 10–12, ¶¶10, 15–24, 30–35).

Andrew H. Perkins, FINRA's Chief Hearing Officer – by Order[14] (Cr 333–334) – characterized the hearing as a "disciplinary proceeding" (Arb1 p.8, ¶21) and made multiple so–called "findings" in support of the "disciplinary" sanction imposed upon Applicant by FINRA (Cr 609 et seq.). When the SEC remanded the matter for "clarification", however, Mr. Perkins appointed Matthew Campbell, Hearing Officer, to author the Remand Decision (Cr 825 et seq.) wherein all previous findings supporting FINRA's "disciplinary" sanctions were sanitized or deleted (Arb1 pp.10–11, ¶¶33(1)–(7), 34–35). FINRA's actions were systematic and fraudulent.

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[12] It is no part of FINRA's "statutorily delegated . . . function" to compel Applicant "to submit to arbitration any dispute which [he] has not agreed so to submit", *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582, 80 S. Ct. 1347, 4 L.Ed.2d 1409 (1960) (emphasis added).

[13] See, for example, FINRA's Remand Brief in Opposition to the Application for Review ("FINRA's Remand Brief" or "Frb") at Frb1, 2, 3, 7, 11–15, and, generally, Frb16–28).

[14] FINRA argues implausibly that its Order - which describes Arbitration II as a "disciplinary proceeding" (Cr 333) - and Applicant's references to that Order are a "thinly-veiled attempt [by Applicant] to elevate form over substance" (Frb19).

FINRA intended that reliance be placed upon its knowingly-false representations.[15] Applicant and the SEC did so rely.[16] Applicant requested that Arbitration I be stayed (Arb1 p.5, ¶9). He participated in Arbitration I under protest (Id.). FINRA imposed "disciplinary" sanctions (Arb1 p.8, ¶21). Applicant was suspended "from associating in any capacity with any FINRA member firm for his failure to pay [the Award]" (D1), and, on December 18, 2016, the suspension converted to a bar (Arb1 p.8, 20). Applicant lost his livelihood (Arb1 p.8, ¶23) and was deprived of his constitutional right to sue in court, which, on any measure, constitutes irreparable harm. Applicant respectfully requests that the SEC find that FINRA's Impeachable Actions were fraudulent and outside the scope of FINRA's statutorily-delegated authority.

B. NJCFA Violations

To state a NJCFA claim, [Applicant] must show three elements: (1) unlawful conduct by [FINRA]; (2) an ascertainable loss by [Applicant]; and (3) a causal relationship between the unlawful conduct and the ascertainable loss.[17]

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[15] It is reasonable to infer that FINRA did not brief the issue of jurisdiction because it knew that it had no jurisdiction with respect to the Impeachable Actions.

[16] Applicant did not discover until February 10, 2017 (Arb1 p.9, ¶27) that FINRA did not have jurisdiction with respect to the Impeachable Actions.

[17] *Francis E. Parker Hem. Borne, Inc. v. Georgia-Pacific LLC,* 945 F. Supp. 2d 543, 558 (D.N.J. 2013)(citing *Int'l Union of*

"[A] claim under the [NJCFA] is essentially a fraud claim",[18] and, as to FINRA's silence on jurisdiction, it is well-settled that "silence may be fraudulent"[19]. The facts supporting Applicant's common law fraud claims and FINRA's silence on jurisdiction and FINRA's fraudulent assertions to the SEC (Arb1 pp.10-12, ¶¶33(1)-(7), 34-35) thus satisfy the first "element" of Applicant's NJCFA claim. The loss of livelihood and the deprivation of a constitutional right to sue satisfy the "ascertainable loss" requirement. FINRA's Impeachable Actions directly "caused" Applicant to be suspended and barred "from associating in any capacity with any FINRA member firm" (Cr 609 et seq.). The third element of the NJCFA analysis is thus satisfied.

IV. **FINRA's prolix musings about court proceedings and its padding of the record with exhibits does not get it over the critical threshold of jurisdiction.**

A. **There can be no charitable characterization of the court's conduct in dismissing and repeatedly refusing to reinstate Sequeira III.**

Operating Eng'rs Local No. 68 Welfare Fund v. Merck & Co., 192 N.J. 372, 929 A.2d 1076 (2007)).

[18] *Hoffman v. Hampshire Labs, Inc.,* 405 N.J. Super. 105, 112 (App. Div. 2009).

[19] In certain circumstances "silence may be fraudulent", *Strawn v. Canuso,* 140 N.J. 43, 56 (1995) (quoting *Weintraub v. Krobatsch,* 64 N.J. 445, 455-56 (1974) and *Keen v. James,* 39 *N.J. Eq.* 527, 540 (E. & A. 1885)).

America is a nation of laws. "No man in this country is so high that he is above the law."[20] The trial court judge did not apparently get the memo. He defied N.J. Court Rules. He disregarded jurisdictional issues. His errors were briefed. He did not thereafter conduct himself with self-awareness and integrity. He held himself out to be "above the law"[20]. His "findings" of fact and law were belied by the record. He thus disregarded his "predominate responsibility", *Rosenberg v. Bunce,* 214 N.J. Super. 300, 303 (App. Div. 1986), "to find the facts and state [relevant] conclusions of law", *Curtis v. Finneran,* 83 N.J. 563, 569 (1980). There can be no clearer evidence than this of abuse of discretion.

B. The judge's errors of fact and law were egregious. He lacked the self-awareness and integrity to admit his mistakes and re-instate Sequeira III. He placed himself "above the law". Wells initiated Arbitration I[21] to prosecute its Note claims.

FINRA did not have jurisdiction. It nevertheless compelled arbitration and issued an Award in favor of Wells and against Applicant.

On September 4, 2014, Applicant filed Sequeira III (Cr 475), and, later that same day, served FINRA by e-mail with the Complaint

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[20] *Burton v. United States,* 202 U.S. 344, 368 (1906) (quoting *United States v. Lee,* 106 U.S. 196, 213 (1882)).

[21] "Arbitration I" refers to *Wells Fargo Advisors, LLC v. Keith Patrick Sequeira,* Case No. 12-01869 (Aug. 5, 2014). Filed May 28, 2012. Decided August 5, 2014.

& Exhibits ("Complaint")[22] (Cr 473–4, 475 et seq.). FINRA acknowledged receipt of the Complaint, which, among other things, challenged the arbitrability of Wells' Note claims (Cr 475 et seq.).

On March 22, 2014, that is, before Sequeira III was filed, Applicant had submitted the issue of arbitrability to the N.J. Superior Court Appellate Division.[23] The Appellate Division – not the court – thus had jurisdiction on the issue of arbitrability.[24] On January 23, 2015, the court nevertheless ordered that Wells[25] would be dismissed without prejudice on March 24, 2015 unless actions pursuant to R. 1:13–7 were taken before that time.

On March 24, 2015, Applicant did take timely action; specifically, he filed in court: (a) proof of service on FINRA of

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[22] FINRA (Cr 473 et seq.) and the court (see, for example, Cr 279 at p.4, 2nd bullet point on page) mistakenly characterized the Complaint as a "motion to vacate". It is undisputed, however, that the Complaint was timely served on FINRA by e–mail and by ordinary mail (Cr 473 et seq.).

[23] *Sequeira v. Wells Fargo & Co., et al.*, Docket No. A-003239-13T1 ("Appeal II"). Filed March 22, 2014. Decided February 24, 2016. Motion for Reconsideration and other reliefs denied April 13, 2016 (served April 18, 2016).

[24] The ordinary effect of the filing of a notice of appeal is to deprive the trial court of jurisdiction to act further in the matter. *Manalapan Realty v. Township Committee of the Township of Manalapan*, 140 N.J. 366, 376 (1995) (citing *Rolnick v. Rolnick*, 262 N.J. Super. 343, 365–66 (App. Div. 1993) and Pressler, *Current N.J. Court Rules*, comment 1 on R. 2:9–1(a) (1994)).

[25] Wells was one of nine (9) defendants then enjoined in Sequeira III.

the Complaint (Cr 473 et seq.) and (b) acknowledgement by FINRA that it had received the Complaint[22] and that "collection efforts in this matter [would] stop until further notice". Applicant's timely filings thus constituted one of the required "actions" contemplated by R. 1:13–7(c)(1).

On March 24, 2015, Applicant moved for an extension of time of sixty (60) days to amend the Complaint, reduce the number of defendants, and serve the amended complaint on the remaining defendants ("Motion I"). On March 27, 2015 — that is, before Motion I was decided — Sequeira III was dismissed without prejudice as to all nine (9) defendants ("Order A"). On April 10, 2015, Motion I was denied without prejudice ("Order I"). A copy of Order I is attached hereto as Exhibit A.[26] The court's hand–written statement of reasons is set forth below for the SEC's convenience:

> Case was dismissed for lack of Prosecution on 3/27/14. A motion to extend Discovery when no answer has been filed is improper. Movant has yet to file an Affidavit of Service and his telephone call to the Clerk does not suffice to protect his rights. Accordingly, the motion is denied and the matter remains dismissed.

Neither was Motion I "[a] motion to extend Discovery". Nor had Motion I been dismissed more than a year previously on "3/27/14". Nor did the court have jurisdiction given that the

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[26] Applicant respectfully requests that the SEC take administrative notice of Exhibit A for the reasons set forth in Frb at Note 5.

issue of arbitrability had previously been submitted to the Appellate Division.

On August 4, 2016, Applicant attempted service on Wells by service upon its self-proclaimed attorneys, LSP.[27] LSP refused to accept service. Not once. But twice.[28] Wells was eventually served at its registered office on August 24, 2016 (Cr 597). The court's finding that Applicant did not "assert that he encountered any difficulty in serving Defendants" (FINRA's Exhibit C, Order IV at ¶18) is thus belied by the record. LSP's refusal to accept service – clearly – was a "difficulty" which caused a further 3-week delay.

Applicant moved to reinstate Sequeira III after correcting the service deficiency. His Motions were denied without prejudice. The court did not reach the merits.[29] Nor, therefore, did the court "deny"[29] Applicant's so-called "motion to vacate" the Award. FINRA's own finding that "the court dismissed [the Complaint]

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[27] See, Applicant's Request for a Hearing to Assert a Rule 9554 Defense dated August 16, 2016 at pp. 2-3, ¶¶9-17 (Cr 1 et seq.).

[28] See, Cr 593, 595.

[29] On September 29, 2017, the SEC remanded the within matter to FINRA for "clarification" of the sanction imposed upon Applicant but, expressly, stated "we make no determination as to the merits of [Applicant's] appeal and do not reach [Applicant's] arguments". The court in Sequeira III, similarly, did not reach the merits of Applicant's arguments far less "deny" the so-called "motion to vacate" the Award. FINRA itself admits that "the court dismissed [the Complaint] without adjudication on the merits" (D3).

without adjudication on the merits" (D3) supports Applicant's position.

C. Apart from his errors of fact and law, moreover, the court did not reach the merits of — nor "deny" — Applicant's so—called "motion to vacate" the Award.

Applicant asserted a Rule 9554 defense. A "disciplinary proceeding" (Cr 333) was held to decide a single legal question, that is, whether Sequeira III had been "denied" (Cr 275 et seq.).

Andrew H. Perkins, FINRA's Chief Hearing Officer, presided over the "disciplinary proceeding" (Cr 333).

Applicant argued that "[t]ypically, 'without prejudice' mean[t] that there has been no adjudication on the merits of the claim", *Mason v. Nabisco Brands, Inc.,* 233 N.J. Super. 263, 267—8 (App. Div. 1989) (citing *Melhame v. Borough of Demarest,* 174 N.J. Super. 28, 30—31 (App. Div. 1980)); *Velasquez v. Franz,* 123 N.J. 498, 509 (1991) (the words "without prejudice" generally indicate that there has been no adjudication on the merits of the claim) (citation and quotation marks omitted); *Mystic Isle Development Corp. v. Perskie & Nehmad,* 142 N.J. 310, 331 (1995) (same); *Alan J. Cornblatt, PA v. Barow,* 153 N.J. 218, 243 (1998) (same). Applicant argued, accordingly, that the so—called "motion to vacate" contained in Sequeira III had not been "denied".

Mr. Perkins concluded, however, that the Award became "final" on March 27, 2015 when the Complaint was administratively dismissed (D8). It was a conclusion contradicted by his finding

that "the court dismissed [the Complaint] without adjudication on the merits" (D3). He thus held himself out to be "above the law".

V. Nor is jurisdiction established by FINRA's ignoring or misstating or falsification or cherry-picking of facts and statute and case law (collectively, "Sharp Practices"). Applicant denies FINRA's Frb in its entirety. He reserves the right to respond to FINRA's Sharp Practices and to supplement the record should either of the parties eventually petition the Third Circuit Court of Appeals for review of the SEC's orders. Subject to the foregoing and by way of example and not by way of limitation Applicant states as follows:

A. FINRA's introductory statement (Frb pp.1-3) does not brief the issue of jurisdiction but nevertheless seeks to suppress details of FINRA's fraudulent findings which are set forth in the Decision ("D") dated November 18, 2016 (Cr 609 et seq.).
There are two independent and sufficient reasons for the SEC to decide this matter in favor of Applicant and against FINRA. FINRA did not deny that its Impeachable Actions lacked jurisdiction. FINRA did not brief the issue of jurisdiction, which, therefore, is deemed waived. That, however, should not end the inquiry into FINRA's fraudulent actions.

One cannot do a thing and cause real and irreparable harm but, then, pretend that the thing never occurred. The Impeachable Actions caused Applicant irreparable harm. FINRA nevertheless misrepresented that its Decision dated November 18, 2016 (Cr 609

et seq.) was "moot" (Frb2) because it was "completely replace[d]" (Id.) by Frb.[14]

FINRA alleges that Applicant "attempt[ed] to forestall his satisfaction of the Arbitration Award" (Frb2). FINRA is mistaken. Its Impeachable Actions lacked jurisdiction. The Award was ultra vires and void and impeachable. Applicant quite properly refused to pay. Applicant does not, therefore, launch a "collateral attack on the Arbitration Award" (Frb2). He attacks the Impeachable Actions and, specifically, FINRA's jurisdiction to compel Arbitration I and issue an Award in the first place. He cites again to the fruit of the poisonous tree doctrine.

B. **FINRA admits that Sequeira I & II "are not related to the Arbitration Award" (Frb4) but nevertheless pads the record with pages of irrelevant argument (and exhibits) under the heading "Related Court Actions".**

The heading says it all. FINRA seeks to waste the SEC's time. So be it. It is a matter for FINRA and the SEC.

As to Sequeira I – Applicant appealed the trial court's orders. Pursuant to N.J. Court Rules and precedent, further, he launched a collateral attack alleging fraud upon the court. R. 4:50–1(c). Specifically, he alleged that Prudential Equity Group, LLC ("Prudential") et al. obtained summary judgment on the basis of certifications which contained not one, not two, but forty–four (44) knowing falsehoods that were material to the issues.

Prudential's counsel submitted a certification which contained sixteen (16) such falsehoods. Sequeira IV (Fraud) is on appeal.

C. FINRA does not attach a copy of the Note. Nor amongst its prolix arguments (which FINRA admits are irrelevant) does one find the so-called "mandatory arbitration clause" (D7). The reason is clear. The Arbitration Clause is "unenforceable".

FINRA asserts that the "Note contained a similar articulation of the Level One Agreement's arbitration requirement" (Frb6). FINRA does not, however, reprise the Arbitration Clause for the SEC's convenience. Nor does FINRA demonstrate how (if so) the Arbitration Clause satisfies the 3-pronged *Moon* standard for arbitrability (Arb1 pp.15-16).

On March 29, 2017, Applicant attached a copy of the Note as Exhibit A to his Reply Brief ("Arb") in SEC I (Cr 789 et seq.). The Arbitration Clause is set forth in Arb1 at p.5, ¶8. It does not satisfy the *Moon* standard. It is "unenforceable". FINRA has no jurisdiction.

D. Applicant moved to stay Arbitration I. He served notice that he was participating under protest. FINRA purports to summarize the detail of Arbitration I (Frb6) but does not acknowledge that Applicant's "[u]se of either of these procedures . . . preserved the issue of arbitrability for the court"[30].

FINRA asserts that "[Applicant] and Wells Fargo participated in a two-day arbitration hearing before a FINRA arbitration panel"

[30] *Laborer's Local Union v. Interstate Curb & Sidewalk,* 90 N.J. 450, 465-6 (1982) (citing *In the Matter of Arbitration Between Grover & Universal Underwriters Ins. Co.,* 80 N.J. 221, 230 (1979)).

(Frb6). FINRA implies that Applicant participated willingly. Nothing could be further from the truth. Applicant moved on three separate occasions to stay Arbitration I (Arb1 p.5, ¶9, n.13, 14). He twice noticed FINRA that he was participating in Arbitration I under protest (Id.). His use of either procedure preserved the issue of arbitrability for the court.[30]

E. FINRA purports to follow the contours of Motion and Order in Sequeira III. Why, therefore, does it (1) knowingly omit all references to that part of Order I which establishes the court's abuse of discretion? and (2) knowingly omit references to the court's findings which are belied by the record?

FINRA follows the contours of Motion and Order (Frb7–11) whereas its findings in the Decision[31] (Cr 609 et seq.) and the Remand Decision[32] (Cr 825 et seq.) are that Sequeira III was dismissed by Order A, on March 27, 2015, whereupon the Award "became final".[33] FINRA does not, however, inform the SEC that Order A violated R. 1:13–7(c)(1) and R. 1:13–7(c)(4).

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[31] Mr. Perkins found in the Decision that "the arbitration award became final when, on March 27, 2015, the New Jersey Superior Court dismissed [Applicant's] complaint seeking to have the award vacated", (Cr 609 at p.8).

[32] Mr. Campbell found in the Remand Decision that "the arbitration award became final when, on March 27, 2015, the New Jersey Superior Court dismissed [Applicant's] complaint seeking to have the award vacated" (Cr 825 at p.7).

[33] FINRA's conclusion is inconsistent with its earlier finding that "the court dismissed [the Complaint] without adjudication on the merits" (D3).

Applicant had filed in court proof of service and acknowledgement of service[34] (R. 1:13–7(c)(1)). Applicant had also filed a motion with respect to a defendant noticed for dismissal (R. 1:13–7(c)(4)). R. 1:13–7(c) provides that the "order of dismissal required by paragraph (a) shall not be entered" if "one" of the aforestated actions was timely taken. Applicant took three independent and sufficient actions required by N.J. Rules.

Order I is the only other order of particular relevance to this petition. FINRA discusses Order I at Frb7–8. Applicant's transcription (above) of Order I is revealing. It establishes: (1) that Motion I was not "[a] motion to extend Discovery"; (2) that Motion I had not been dismissed more than a year previously on "3/27/14"; (3) that the court did not have jurisdiction given that the issue of arbitrability had previously been submitted to the Appellate Division. Any further review of Applicant's motion practice in the trial court is moot. The court erred at the threshold (and beyond). It must be reversed.

FINRA mischaracterizes Orders II-IV (Frb8-10). Applicant comments as follows. The Complaint was served. FINRA acknowledged

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[34] On September 4, 2014, Applicant served FINRA with the Complaint and Exhibits in Sequeira III stating: "I have moved to vacate the arbitration award. Please find attached a copy of the Complaint." ("Notice of Service" or "NoS FINRA") (Cr 473 et seq.). Applicant attached to the NoS FINRA the "CIS, Complaint & Jury Demand.pdf" and Exhibits 1–4 in Sequeira III (Id.).

service. Sequeira III was impermissibly dismissed. Good cause was established by the court's lack of jurisdiction. The court erred by refusing to reinstate.

F. FINRA misstates the nature and purpose of Arbitration II.

Arbitration II was a "disciplinary proceeding" described as such by FINRA itself (Cr 333). FINRA suppresses this important piece of information. The single legal question to be decided at Arbitration II was whether Sequeira III had been "denied"[35] - not "dismissed" as FINRA would have it (Frb12).

VI. FINRA's legal arguments (Frb15-28) purport to create new law in defiance of the U.S. Supreme Court's holding that the "first and fundamental question [on any review] is that of jurisdiction"[4]. FINRA falls at the threshold. Its remaining arguments are irrelevant.

FINRA misrepresents that "[t]he relevant facts of this case are not subject to dispute" (Frb15) and that its Remand Decision is the "initial matter" (Id.) to be reviewed by the SEC. FINRA is wrong on both counts. The "first"[4] issue is that of jurisdiction, which, in turn, requires that the SEC decide whether the Arbitration Clause in the Note was "enforceable".[7,8]

FINRA is on the wrong side of both arguments. Its remaining arguments are irrelevant and are denied in their entirety.

VII. Conclusion

FINRA's Impeachable Actions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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[35] See, Cr 275 et seq. at p.3, V-Issue, last line.

contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

WHEREFORE, Applicant respectfully submits that the facts and law set forth herein, and in Arb1, compel the findings requested in Arb1 at pp.17–18 together with such other findings and sanctions and awards as the SEC may deem appropriate.

Respectfully submitted.

Dated: 5/11/2018

Signed: Keith P. Sequeira

Keith P. Sequeira
Applicant

Exhibit A

Keith P. Sequeira, *Pro Se*

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E-Mail: kpsequeira@comcast.net

Keith P. Sequeira, Plaintiff, v. Wells Fargo Advisors, LLC, *et al.*, Defendants.	Superior Court of New Jersey Law Division Monmouth County Civil Action Docket No. MON-L-003393-14 Order

This matter having been opened to the Court on Motion by Plaintiff, Keith P. Sequeira *Pro Se.*; the Court having read and considered the papers submitted in support of Motion for an Extension of Time of 60 Days to File and Serve an Amended Complaint; and for good cause appearing;

It is on this 10 day of April, 2015:

Ordered that Plaintiff's Motion for an Extension of Time of 60 Days too File and Serve an Amended Complaint be and hereby is Granted; and it is furthero

GRANTED

0268

Ordered that a copy of the within Order be served on all parties within

7 days of receipt.

The Honorable Dennis R. O'Brien, J.S.C.

This Motion was:

_____ Opposed

_X_ Unopposed

The decision of the Court was

____ Written

_____ Oral and entered on the record on _____

Case was dismissed for lack of prosecution on 3/27/14. Attorney to extend discovery when no answer has been filed is improper. Counsel has yet to file an Affidavit of Service and his telephone call to the Clerk does not suffice to protect his rights.

Accordingly, the motion is denied and the matter remains dismissed.

0267

United States of America
before the
Securities and Exchange Commission

Administrative Proceeding File No. 3–17734 (On Remand)

In the Matter of the Application of:	
Keith Patrick Sequeira	
For Review of Action Taken by:	
FINRA	

Certification of Service

Keith P. Sequeira

[redacted]
Middletown
NJ [redacted]

Telephone: [redacted]
E–Mail: [redacted]@comcast.net

I, the undersigned, Keith P. Sequeira, Applicant, hereby certify as follows:

1. On this 11th day of May, 2018, a true and correct copy of each of:

(1) Cover Letter;

(2) Applicant's Reply Brief;

(3) Certification of Service.

was served by Fax & Certified Mail R.R.R. as follows:

- Office of the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Mail Stop 1090 – Room # 10915, Washington, DC 20549; Fax No. (703) 813–9793;
- Alan Lawhead, Director – Appellate Group, FINRA, Office of General Counsel, 1735 K Street, NW, Washington, DC 20006; Fax No. (202) 728–8264.

2. The word count of Appellant's Reply Brief is 4373.

3. I certify that the forgoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: 5/11/2018

Signature: K. P. Sequeira

Keith P. Sequeira
Applicant