

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION



WASHINGTON, D.C.

In the Matter of the Application of Bart Steven Kaplow – File No. 3-18877
William Rosenthal – File No. 3-18617
Tim Sullivan – File No. 3-18616.
Daryl Andrew Cole – File No. 3-18879
Frank Cuenca – File No. 3-18883
Thomas Prentice – File No. 3-18894
Kurt Jackson – File No. 3-18910
Ronald R. Wetzel – File No. 3-18934
Brock Mosely – File No. 3-18919
For Review of Action Taken by Financial Industry Regulatory Authority

**FINRA'S MOTION TO EXPEDITE APPEAL OF BART STEVEN KAPLOW
AND STAY THE PROCEEDINGS IN THE OTHER PENDING
ARBITRATION EXPUNGEMENT APPEALS**

Alan Lawhead
Vice President and
Director – Appellate Group

Megan Rauch
Associate General Counsel

FINRA
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8863

January 31, 2019

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The Commission has pending before it a series of separate appeals that all raise the same threshold issue: Does the Commission possess jurisdiction to order FINRA’s Office of Dispute Resolution to allow a claimant to arbitrate a request to expunge a previous, adverse arbitration award?

Each of the above-captioned matters concerns an adverse arbitration award against the applicant, a FINRA associated person, and in favor of a customer. In each instance, the

applicant—acting as an arbitration claimant—filed a statement of claim in FINRA’s arbitration forum seeking to expunge the adverse award from his BrokerCheck records, and FINRA denied the claimant’s attempt to seek expungement in FINRA’s arbitration forum. In response, each applicant filed an application for review with the Commission, requesting that the Commission order FINRA’s Office of Dispute Resolution to permit him to arbitrate his expungement request (collectively, the “Arbitration Expungement Appeals”).

In the Kaplow appeal, the Commission flagged the issue of jurisdiction and directed that the parties limit their briefs to the question of whether the Commission has jurisdiction to consider Kaplow’s application for review. Kaplow and FINRA have filed their initial briefs and Kaplow’s reply brief is due February 13, 2019. The Commission also requested that the parties address whether it has jurisdiction in Daryl Andrew Cole (File No. 3-18879), Frank Cuenca (File No. 3-18883), and Thomas Prentice (File No. 3-18894). In each of these appeals, FINRA will present the same core argument on jurisdiction to the Commission: there is no FINRA action that is “subject to review” under § 19(d) of the Securities Exchange Act of 1934. Although the Commission has not yet directed the parties to brief the jurisdiction issue in five of the Arbitration Expungement Appeals, the applicants are seeking the same relief as Kaplow and the Commission may well order the parties to brief jurisdiction shortly.¹

In light of the common issues raised in the Arbitration Expungement Appeals, FINRA respectfully moves the Commission to:

¹ FINRA has a pending motion to dismiss the applications for review for untimeliness in William Rosenthal (File No. 3-18617) and Tim Sullivan (File No. 3-18616). Once the issue of timeliness is addressed, the jurisdiction question will remain in these two appeals. The parties are awaiting a briefing schedule in Kurt Jackson (File No. 3-18910), Ronald R. Wetzel (File No. 3-18934), and Brock Moseley (File No. 3-18919). For more information, please see *Appendix A*.

1. Expedite consideration of the parties' arguments on the issue of jurisdiction in Bart Steven Kaplow (File No. 3-18877); and
2. Stay all briefing and further proceedings in the other eight Arbitration Expungement Appeals until the Commission issues a decision in the *Kaplow* appeal.

FINRA requests that the Commission stay the eight appeals as of February 13, 2019, the date for Kaplow to file his reply brief.

The Commission's entry of a stay would further the just, speedy, and inexpensive resolution of the Arbitration Expungement Appeals. *See* SEC Rules of Practice, Rule 103(a). The parties would not need to file multiple briefs that repeat essentially the same arguments. The Commission would avoid, for now, processing and docketing multiple sets of briefs for all nine appeals. The Commission would not need to expend resources to track and coordinate the rulings in all nine appeals. All the applications for review would await a ruling in the *Kaplow* appeal. Moreover, there is no prejudice to the applicants resulting from a stay of the proceedings in the other eight appeals.

Prior to filing this motion, counsel for FINRA inquired whether counsel for applicants would consent to the relief sought. Counsel for the applicants indicated that the applicants do not object to the motion to expedite consideration of the *Kaplow* appeal, but the applicants object to staying the proceedings in the other eight pending matters.

FINRA's arguments to dismiss Kaplow's application for review are based on well-established Commission precedent related to its jurisdiction. Therefore, in the interest of speed and efficiency, FINRA asks the Commission to grant its motions.

Respectfully submitted,



Alan Lawhead
Vice President and
Director – Appellate Group
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8853

Date: January 31, 2019

CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 31st day of January 2019, I caused a copy of FINRA's Motion to Expedite Appeal of Bart Steven Kaplow and Stay the Proceedings in the Other Pending Arbitration Appeals to be served by messenger on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

and via FedEx and electronic mail on:

Dochtor Kennedy
AdvisorLaw, LLC
9737 Wadsworth Pkwy, Suite 205
Westminster, Co 80021
legal@advisorlawyer.com
Counsel for Kaplow

Owen Harnett
Advisor Law, LLC
3400 Industrial Lane, Unit 10A
Broomfield, CO 80020
owen@advisorlawyer.com
Counsel for Rosenthal

Harris Friedman
AdvisorLaw, LLC
9737 Wadsworth Pkwy, Suite 205
Westminster, Co 80021
harris@advisorlawyer.com
Counsel for Sullivan, Wetzel

Michael Bessette
HLBS Law, LLC
9737 Wadsworth Pkwy, Suite G-100
Westminster, CO 80021
Counsel for Cole, Cuenca

Armin Sarabi
Advisor Law, LLC
3400 Industrial Lane, Unit 10A
Broomfield, CO 80020
armin@advisorlawyer.com
Counsel for Prentice

Michelle Atlas
AdvisorLaw, LLC
9737 Wadsworth Pkwy, Suite 205
Westminster, Co 80021
matlas@advisorlawyer.com
Counsel for Jackson, Moseley

Service was made on the Commission by messenger and the applicants by mail due to the distance between the offices of FINRA and the applicants.



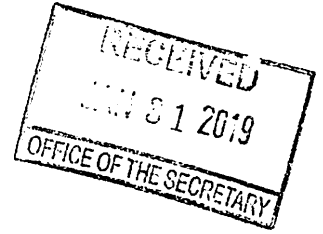
Megan Rauch
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8863



Financial Industry Regulatory Authority

Megan Rauch
Associate General Counsel

Direct: (202) 728-8863
Fax: (202) 728-8264



January 31, 2019

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090


**RE: In the Matter of the Application of Tim Sullivan
Administrative Proceeding No. 3-18616**

Mr. Fields:

Enclosed please find the original and three copies of FINRA's Motion to Expedite Appeal of Bart Steven Kaplow and Stay the Proceedings in the Other Pending Arbitration Appeals for the above-referenced matter.

Please contact me at (202) 728-8863 if you have any questions.

Sincerely,


Megan Rauch

cc: Doctor Kennedy
Owen Harnett
Harris Friedman
Michael Bessette
Armin Sarabi
Michelle Atlas

Enclosures