

HARD COPY

SECURITIES EXCHANGE COMMISSION	
Denial of FINRA Forum for Expungement Arbitration:	
Applicant:	
William Burk Rosenthal	
v.	CASE NO. <u>3-18617</u>
Respondent:	
Financial Industry Regulatory Authority	
APPLICATION FOR REVIEW	

On February 21, 2018, Mr. William B. Rosenthal ("Rosenthal"), who resides at [REDACTED] [REDACTED] in Fort Worth, Texas [REDACTED], submitted a Statement of Claim to the Financial Industry Regulatory Authority ("FINRA") Office of Dispute Resolution requesting a hearing for the expungement of his CRD record as it relates to two customer dispute disclosures, occurrence numbers 1457912 ("the Occurrence") and 1224432. On May 31, 2018, more than two months after the Respondent's answer was filed, and on the same day that the Initial Pre-Hearing Conference was scheduled, counsel for Rosenthal received notice that the Director of FINRA Office of Dispute Resolution ("the Director") denied FINRA forum for arbitration for expungement of the Occurrence. This notice stated the Occurrence arises from a "prior adverse Award" and is not eligible for arbitration, citing Industry Code Rule 13203(a). However, Industry Code Rule 13203(a) does not state that occurrences arising from prior adverse Awards are ineligible for FINRA arbitration. Rather, it states:

- (a) The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director may exercise the authority under this Rule.

Industry Code Rule 13203(a) is excessively vague, and allows for an egregious amount of discretion on the part of the Director. It offers no true guidance on what is not eligible for FINRA forum and allows for many inconsistencies. In fact, counsel for Rosenthal has represented other Associated Persons in FINRA arbitration for expungement of disclosures arising from prior adverse Awards and has succeeded on the merits in at least one case. It is worth noting that FINRA did file a Partial Opposition to the Motion to Confirm Arbitration Award in that case. However, the case resulted in an Order for Confirmation of Arbitration Award, which was ordered on May 15, 2018, just two weeks before this notice denying FINRA Forum was issued. It is also important to note that in addition to no codified rule barring the arbitration for expungement of disclosures arising from a prior adverse Award, FINRA's Dispute Resolution Expungement Training and Exam packet states that arbitrators "should not" grant expungement for these types of occurrences. It does not state that they cannot grant expungement for these types of occurrences and it stands to reason that there would be no need for guidance on whether they should or should not be expunged from a CRD record if FINRA intended for these types of occurrences to be ineligible for FINRA forum altogether. Based on Rosenthal's obligations to abide by FINRA Rules, he is bound to FINRA arbitration for disputes between himself and a Member Firm. The Director has abused their discretion by denying forum in such an inconsistent and arbitrary manner.

Rosenthal submits this Application for Review to the Commission requesting that he be permitted to bring his case in the forum that he is both entitled to and bound to by the FINRA Industry Code Rules. Whether the Occurrence is eligible for expungement should be subsequently determined by the Panel that is assigned in arbitration, in accordance with FINRA Industry Code Rules 2080 and 13805.

Dated: June 29, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Owen Harnett", written over a horizontal line.

Owen Harnett

Attorney

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TO: Dochter Kennedy, Esq.

CC: Tyler Schubauer, Esq.

From: Sarah Farrukh
Case Administrator

Subject: FINRA Office of Dispute Resolution Arbitration Number 18-00723
William Burk Rosenthal vs. Securities America, Inc.

Date: May 31, 2018

The Director of FINRA Office of Dispute Resolution determined that your request for expungement of occurrence number 1457912 in your Statement of Claim, which arises from a prior adverse Award, is not eligible for arbitration. Therefore, pursuant to the Customer Code Rule 12203(a) or Industry Code Rule 13203(a), the forum as to occurrence number 1457912 is denied. The case will proceed in this forum as to occurrence number 1224432.

If you have any questions, please do not hesitate to contact me at 312-899-4449 or by email at Sarah.Farrukh@finra.org.

SFH:sfh:LC53W
idr: 07/08/2016

RECIPIENTS:

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80020

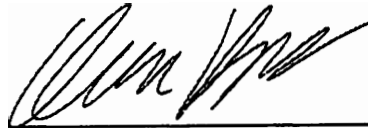
On Behalf Of: William Burk Rosenthal

CC:

Tyler Schubauer, Esq., Securities America, Inc., 12325 Port Grace Blvd., Lavista, NE 68128
On Behalf Of: Securities America, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above APPLICATION FOR REVIEW was served to the Respondents via Registered Mail on this day 29th of June, 2018.



Owen Harnett
Attorney

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