

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Consolidated Arbitration Applications

File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18910, 3-18919,
3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19219, 3-19405, 3-19573, 3-19574,
3-19611, 3-20160, 3-20205, 3-20467, 3-20499, 3-20620, 3-20621

FINRA’S MOTION TO CONSOLIDATE AND POSTPONE BRIEFING

I. INTRODUCTION

On April 7, 2022, Neil Joseph Gagnon filed with the Commission an application for review.¹ Gagnon appeals a determination by the Director of FINRA Dispute Resolution Services (“DRS”) that Gagnon’s request to expunge two customer arbitration awards from FINRA’s Central Registration Depository (“CRD®”) is not eligible for arbitration. Gagnon’s appeal presents the same fact pattern, and raises the same legal issues, as numerous appeals previously consolidated by the Commission that have been fully briefed. Consequently, FINRA requests that the Commission consolidate Gagnon’s appeal with those appeals and postpone briefing in this appeal pending resolution of the consolidated appeals. Counsel for Gagnon does not oppose FINRA’s motion.²

¹ *In the Matter of the Application for Review of Neil Joseph Gagnon*, Administrative Proceeding File No. 3-20819.

² Gagnon’s counsel and other attorneys associated with the same firm represent the majority of the applicants in the Consolidated Arbitration Applications. FINRA has not determined whether other counsel oppose this motion.

II. BACKGROUND

A. Gagnon

Gagnon entered the securities industry in 1974. R. at 32.³ Currently, he is a manager and chief executive officer at Gagnon Securities, LLC, a FINRA member firm. R. at 34.

B. Procedural Background

1. June 2000 Customer Award Against Gagnon

In February 1999, Gagnon's customer filed an arbitration claim against Gagnon and his former firm, Gilder Gagnon Howe & Co. LLC ("Gilder"). R. at 1. The customer alleged that Gagnon and Gilder violated federal and state securities laws and NASD and NYSE rules involving a variety of securities transactions and asserted causes of action for negligence, breach of contract, breach of fiduciary duty, common law fraud, intentional misrepresentation, excessive trading, suitability, the failure to execute liquidation orders, and inadequate supervision. R. at 1.

In June 2000, the arbitration panel awarded the customer \$218,000 in compensatory damages, plus 10 percent interest per annum from April 9, 1998, until the award was paid in full, to be paid solely by Gagnon. R. at 2.

2. January 2001 Customer Award Against Gagnon

In September 1999, another customer filed arbitration claim against Gagnon and Gilder. R. at 7. The customer alleged that Gagnon and Gilder violated the securities laws and asserted several causes of action, including breach of fiduciary duty, fraud, negligence, breach of

³ "R. at ___" refers to the page number in the certified record filed on April 22, 2022, in Gagnon's appeal, *In the Matter of the Application for Review of Neil Joseph Gagnon*, Administrative Proceeding File No. 3-20819.

contract, inadequate supervision, unsuitable transactions, churning, and lack of due diligence. R. at 7.

In January 2001, the arbitration panel awarded the customer \$100,000 in compensatory damages, plus nine percent interest from the date of the award, to be paid jointly and severally by Gagnon and Gilder. R. at 7.

3. FINRA Determines Gagnon’s Expungement Request Is Ineligible for Arbitration

On March 7, 2022, Gagnon filed a statement of claim with DRS. R. at 9-17. Gagnon sought expungement of the June 2000 and January 2001 customer awards from CRD and BrokerCheck. R. at 9. On March 9, 2022, the Director of DRS notified Gagnon that his request to expunge the customer awards “is ineligible for expungement from CRD because an adverse award against . . . [Gagnon] was rendered, and . . . [Gagnon] was held liable for damages to the customer[s].” R. at 19. The notice further explained that the Commission “has approved three narrowly crafted grounds in FINRA Rule 2080(b)(1) for recommending expungement in FINRA’s arbitration forum” and that “[a] liability finding by a prior arbitrator or arbitration panel precludes a subsequent arbitrator from making one of the required findings” under the rule. R. at 19. On April 7, 2022, Gagnon filed an application for review with the Commission. R. at 21-23.

C. The Consolidated Arbitration Appeals

The Commission previously consolidated numerous applications for review (the “Consolidated Arbitration Appeals”) presenting the same fact pattern and legal issues as presented by Gagnon in this appeal. *See Consolidated Arbitration Applications*, Exchange Act

Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020).⁴ The parties in the Consolidated Arbitration Appeals have fully briefed the merits of those appeals.

III. ARGUMENT

Gagnon's appeal presents the same fact pattern, and raises the same legal issues, as the Consolidated Arbitration Appeals. Gagnon's counsel has indicated that he does not oppose consolidation of Gagnon's appeal with the Consolidated Arbitration Appeals and postponing briefing in this matter. Accordingly, for the reasons set forth herein, the Commission should consolidate this matter with the Consolidated Arbitration Appeals and postpone briefing.

Commission Rule of Practice 201(a) provides that the Commission may consolidate "proceedings involving a common question of law or fact . . . for hearing of any or all matters at issue in such proceedings." 17 C.F.R. § 201.201(a). This appeal shares the same common fact pattern and questions of law as presented in the Consolidated Arbitration Appeals. Like the applicants in those cases, Gagnon filed an arbitration for expungement of two customer disputes in which, for each, there had been an adverse arbitration award. After FINRA notified Gagnon that adverse arbitration awards are inappropriate for an expungement arbitration, he sought Commission review of that decision. Further, like many of the applicants in the Consolidated Arbitration Appeals, Gagnon is represented by counsel associated with the law firm, HLBS Law. R. at 24.

⁴ The Commission initially consolidated the Consolidated Arbitration Appeals to determine whether it had jurisdiction to review them. After determining that it had jurisdiction, the Commission found that the proceeding should continue to be consolidated for purposes of briefing the merits.

Commission Rule of Practice 161(a) authorizes the Commission to order postponement for “good cause shown.” 17 C.F.R. § 201.161(a). Rule of Practice 161(b) sets forth the factors the Commission must consider in determining whether to grant a postponement, including: (1) the length of the proceeding to date; (2) the number of postponements previously granted; (3) the stage of the proceedings at the time of the request for postponement; and (4) any other such matters as justice may require. 17 C.F.R. § 201.161(b). These factors favor postponement here.

Gagnon’s appeal was filed less than three weeks ago and there have been no previous postponements. Moreover, consolidating this appeal with the Consolidated Arbitration Appeals would promote administrative efficiency and avoid the need for the parties to file briefs that repeat the same arguments. Accordingly, the Commission should grant FINRA’s unopposed motion to consolidate Gagnon’s appeal with the Consolidated Arbitration Appeals and postpone briefing.

Respectfully submitted,

/s/ Lisa Jones Toms

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April 22, 2022

CERTIFICATE OF COMPLIANCE

I, Lisa Jones Toms, certify that this motion complies with the Commission's Rules of Practice by omitting or redacting any sensitive personal information described in Rule of Practice 151(e).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lisa Jones Toms, certify that on this 22nd day of April 2022, I caused a copy of the foregoing FINRA's Motion to Consolidate and Postpone Briefing, In the Matter of the Consolidated Arbitration Applications, Administrative Proceeding File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18910, 3-18919, 3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19219, 3-19405, 3-19573, 3-19574, 3-19611, 3-20160, 3-20205, 3-20467, 3-20499, 3-20620, 3-20621, to be filed through the SEC's eFAP system with:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
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and served by electronic mail on the following:

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