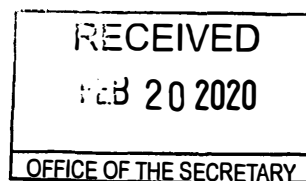


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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**



In the Matter of the Application Of  
Thomas Christopher Prentice  
For Review of Action Taken By  
FINRA  
File No. 3-18894

**PRENTICE'S REPLY BRIEF**

This matter concerns the Securities and Exchange Commission's scheduling order requesting briefing on the following three issues: (1) Did Prentice ask the arbitrator to consider and rule on his claim to expunge the prior adverse arbitration award despite FINRA's determination that the claim was ineligible for arbitration? (2) In denying the claim as lacking "compelling justification" did the arbitrator deny expungement relief as to that claim on the merits, or instead decline to consider the claim? (3) How does the arbitrator's decision bear on whether Prentice accessed the arbitration service, or was prohibited or limited in his access to that service? What is the relevance of the Commission's decision in *John Boone Kincaid*?

Regarding the first issue, the answer is yes. On February 5, 2018, the Statement of Claim requesting expungement of Occurrence No. 170892 was filed. On June 14, 2018, an Amended Statement of Claim was filed. On August 23, 2018, a Second Amended Statement of Claim was filed. On April 27, 2018 an Arbitrator was assigned to hear the matter. On June 5, 2018 an Initial Prehearing Conference was held and a hearing on the merits was scheduled for October 25, 2018.

Four months after the IPHC and two weeks prior to the scheduled hearing, on October 9, 2018, the FINRA Office of Dispute Resolution (“ODR”) advised the parties and the Arbitrator that the Director of FINRA ODR (the “Director”) determined that Mr. Prentice’s request for expungement of occurrence number 170892 is not eligible for arbitration as it arises from a prior adverse award. On October 15, 2018, Mr. Prentice requested that the Arbitrator consider his request for expungement of occurrence number 170892 despite the Director’s October 9 decision.

The Arbitrator denied Mr. Prentice on the basis that recommending expungement in light of the Director’s determination would require a compelling justification. And that even absent such a determination, second-guessing an arbitrator who heard or read all of the evidence would itself require a compelling justification. There is currently nothing in the FINRA rules that would prevent an Arbitrator from determining there a compelling justification and granting the relief of expungement of an arbitration award. The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties. Because of this plenary power the intervention of the Director of FINRA was unnecessary.

13413. *Jurisdiction of Panel and Authority to Interpret the Code.*

Next, when FINRA denied the claim as lacking compelling justification the arbitrator denied expungement relief by declining to even consider the claim. As stated above the claim was not heard on the merits because the Director intervened two weeks prior, therefore causing the Arbitrator to choose not to decide the claim on the merits.

Finally, in the Kincaid decision, the Arbitrator gave Kincaid the opportunity by August 27, 2018 to file a brief attempting to show why the Arbitrator should not dismiss this case under *FINRA Rule* 13206(a). FINRA states that there is no evidence that “Kincaid filed any such brief.” On October 2, 2018, the arbitrator issued a written award denying Kincaid’s request for expungement

based on the “pleadings and other materials filed by the parties.” Kincaid did not file the requested brief therefore the arbitrator decided against Kincaid. In our current case there was no opportunity given due to the Director’s intervention which prevented the case from being decided on the merits. By his interference the Director prevent Mr. Prentice from using the essential service of arbitration for expungement.

While it is true that an action by a self-regulatory organization (“SRO”) such as FINRA “is not reviewable merely because it adversely affects the applicant.” *Sky Capital LLC*, Exchange Act Release No. 55828, 2007 WL 1559228, at \*2, 3 (May 30, 2007). Congress under the *Securities Exchange Act* Section 19(d)(2) gave the authority to the Commission to ensure that an essential service is not denied to a claimant. Section 19(d)(2) authorizes the Commission to review such actions in specific circumstances if that action prohibits or limits any person in respect to access to services offered by [the SRO].” 15 U.S.C. § 78s(d)(2). The fact that there is another avenue for Mr. Prentice to seek relief, under the Federal Arbitration Act, does not relieve the Commission of its oversight responsibility.

The current matter is substantially differentiated from *Kincaid* in that *Kincaid* was not denied access to the forum and was given the opportunity to provide “pleadings and other materials filed by the parties” where the instant case petitioner was denied the same opportunity due to the Director’s direct intervention before the arbitrator could determine on the merits if relief was warranted. The Commission has a responsibility to provide oversight, particularly, in circumstances where a case has not been decided on the merits thereby preventing access to an essential fundamental service.

Dated: February 13, 2020

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Olivia Peterson, on February 13, 2020, served the original and three copies of Prentice's Reply Brief on:

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, DC 20549-1090  
Fax: 202-772-9324

**(BY FAX)** I caused the documents to be sent to the persons at the fax number listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**(BY MAIL)** I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

**(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

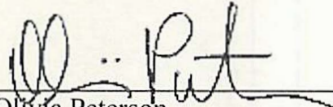
On this date, I also caused the original and three copies of Prentice's Reply Brief on:

Megan Rauch  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
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**(BY EMAIL)** I caused the documents to be sent to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**(BY MAIL)** I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

**(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

  
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Olivia Peterson  
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