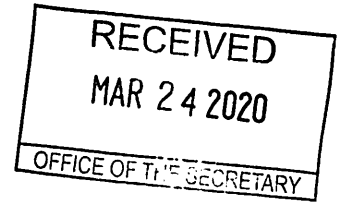


**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**



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 TO FINRA'S RESPONSE**

This is a reply to FINRA's response to our client's supplemental brief. Regarding the first issue, and FINRA's response. We reiterate our response from our brief, on October 15, 2018, Mr. Prentice requested that the Arbitrator consider his request for expungement of occurrence number 170892. 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.

On the second issue, FINRA argues that the arbitrator denied expungement relief as to the claim on the merits. The Award itself states that our client's request for the Arbitrator to consider his request of occurrence 170892 is denied because the occurrence was the subject of a FINRA arbitration case which resulted in an award in favor of the customer against our client. The Director of FINRA determined that the forum was not available for a request to expunge the occurrence. The arbitrator goes on to lay out in the award that recommending expungement in light of this

determination would require a compelling justification. And that addressing the evidence of this occurrence would require a compelling justification because it would be second-guessing the arbitrator who heard or read all of the evidence in the prior case. This is not addressing our client's claim, rather FINRA is avoiding it by pointing to the original arbitration award decision from 1996. This is confusing because it seems to suggest that FINRA allowing the equitable remedy of expungement would somehow be reversing the arbitration award from 1996. We are not trying to reverse the arbitration award from 1996, by definition expungement is not a reversal of an arbitration award, rather it is a cleansing of the public record.

FINRA's suggestion that a claim for expungement cannot be addressed because its "not eligible for arbitration as it arises from a prior adverse award" seemingly undermines the very notion of expungement to begin with. As the process of expungement is meant to address prior adverse awards and complaints. Further, there is no rule under FINRA that prevents our client from seeking expungement relief in a FINRA arbitration forum. There is also nothing in the FINRA rules that would prevent an Arbitrator from determining there is a compelling justification. Deciding there is such justification is not "second guessing" the arbitrator who decided the arbitration award because, as stated above, expungement is not a reversal of award. Under the FINRA rules the arbitrator has the authority to grant the equitable relief of expungement. See 13413. *Jurisdiction of Panel and Authority to Interpret the Code*. The arbitrator did not decide our client's claim on the merits as the arbitrator does not even address the merits of our client's claim.

Next, FINRA argues that the fact that our client received a negative result does not mean that he was denied access to the arbitration service. Except FINRA did not even address our client's claim, the award itself only brings up the facts from Occurrence #1454693. The merits of our client's claim were never decided on, as stated above in the award FINRA suggests that having an

expungement would second guess the arbitrator in the original 1996 arbitration award hearing. This decision actually does limit our client's access to the arbitration service for forum specifically regarding our claim for expungement, because it refused to even hear the evidence or facts of the claim. As stated in our prior brief it is clear that FINRA did not limit Kincaid's access to its arbitration service, this is a distinct difference from our claim. As the arbitrator did not rule on Prentice's request for expungement on the merits.

FINRA's entire argument here is an attempt to undermine the SEC's rightful authority. It is true that there is another available path of remedy under the Federal Arbitration Act ("FAA"). However, there is no rule under FINRA that bars our client from seeking expungement of the arbitration award. FINRA has had the opportunity to clearly establish new rules regarding the arbitration process in regards to expungement. FINRA has made multiple proposals to change its rules to update its filing fees, training, and other requirements. There is still no rule barring the equitable remedy of expungement that our client seeks. Moreover, 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). Once again, 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 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. FINRA's decision that the occurrence was the subject of a FINRA arbitration case which resulted in an award in favor of the customer and against Claimant and Respondent,

jointly and severally and that accordingly, the Director of FINRA ODR determined that this forum was unavailable for a request to expunge this occurrence from Claimant's CRD records and BrokerCheck® Report, did limit our client's access to the arbitration service. And that absent a compelling justification determination, it would be second-guessing an arbitrator who heard or read all of the evidence would itself require a compelling justification is a virtual upending of the entire expungement process. If FINRA wants to bar the equitable remedy of expungement it should so without trying to undermine the SEC's Authority to decide this matter.

Dated: March 12, 2020.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Olivia Peterson, on March 12, 2020, served the original and three copies of Prentice's Reply to FINRA's Response on:

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

**[X] (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.

**[X] (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.

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

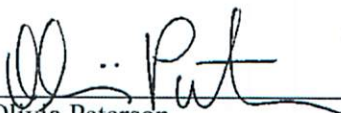
On this date, I also caused the original and three copies of Prentice's Reply to FINRA's Response on:

Megan Rauch  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
Email: [nac.casefilings@finra.org](mailto:nac.casefilings@finra.org)

**[X] (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.

**[X] (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.

**[X] (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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