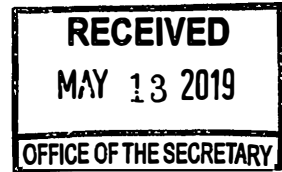


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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.



In the Matter of the Application Of

Donald Anthony Wojnowski

For Review of Action Taken By

FINRA

File No. 3-19014

**MR. WOJNOWSKI'S BRIEF ON COMMISSION'S JURISDICTION OVER THIS
APPEAL**

Donald Anthony Wojnowski seeks Commission's review of a determination by the Director of FINRA Office of Dispute Resolution ("Director") to deny Mr. Wojnowski's access to the Financial Industry Regulatory Authority, Inc. ("FINRA") arbitration forum, under FINRA Code of Arbitration Procedure for Industry Disputes ("FINRA Rules") Rule 13203(a). Mr. Wojnowski, by and through counsel, timely submitted an Application for Review to the Commission, pursuant to Section 19(d) of the Securities Exchange Act of 1934 (the "Exchange Act")¹, challenging the Director's determination that Mr. Wojnowski's claim is ineligible for arbitration in the FINRA forum. The Commission has jurisdiction over the Director's determination and should hear Mr. Wojnowski's appeal because the Director's determination is a final action by FINRA which prohibits or limits Mr. Wojnowski's access to services offered by FINRA, and such prohibition is an aggrieving decision by the Director.

¹ 15 U.S.C. § 78s(d)

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. FINRA is a not-for-profit Delaware corporation and self-regulatory organization (“SRO”) registered with the Securities Exchange Commission (“SEC”) as a national securities association. FINRA, through its subsidiary, FINRA Regulation, Inc., has established the FINRA Office of Dispute Resolution, which carries out the sole function of operating an arbitration and mediation forum to resolve securities industry disputes. The Office of Dispute Resolution’s authority is limited to administration of the forum, not regulatory policy decisions.

2. FINRA maintains an electronic database called the Central Registration Depository (“CRD”) and a public reporting system known as BrokerCheck.² This online, publicly marketed reporting system includes the wide-spread disclosure of customer complaints against each Associated Person of a FINRA member firm. FINRA requires member firms to report all customer complaints that meet specific requirements to FINRA, and publicly discloses these complaints, absent any determination of merit or factual basis. As discussed below, FINRA provides only one viable remedy for almost all Associated Persons to remove false or misreported customer complaints: expungement requests, pursuant to Rule 2080.

3. On January 23, 2019, Mr. Wojnowski, by and through counsel, filed a Statement of Claim and Submission Agreement to FINRA for arbitration (FINRA Case Number: 19-00283) against E.F. Hutton & Company, Inc. (“Respondent”), requesting expungement of one customer complaint from his CRD record: Occurrence No. 151029, with Ms. Lynn Reeves and Mr. Robert Reeves as the underlying customers (the “Reeves Occurrence”).

² 15 U.S.C. 78o-3(i)(1)

4. On January 29, 2019, Mr. Wojnowski received a Forum Denial notice that his request for expungement of the Reeves Occurrence, according to the Director, “[was] not eligible for arbitration. Therefore, pursuant to ... [FINRA] Rule 13203(a) we decline to accept your claim.” See attached **Exhibit A**.

5. FINRA Rule 13203(a) states that:

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.

6. On February 22, 2019, Mr. Wojnowski timely filed his Application for Review of FINRA’s Denial of Forum.

7. On April 5, 2019, the SEC sent its briefing schedule indicating that Mr. Wojnowski’s brief on jurisdiction is due on May 6, 2019, FINRA’s response is due on June 5, 2019, and Mr. Wojnowski’s response is due June 19, 2019.

8. Mr. Wojnowski hereby timely submits his brief.

ARGUMENT

9. The Commission has jurisdiction over this appeal and should permit the merits of Mr. Wojnowski’s appeal to be heard. Section 19(d) of the Exchange Act requires the Commission to review a final action taken by an “SRO that ‘prohibits or limits access to services offered’ by the SRO to any person.” (*See* SEC Release No. 72182).

A. The Director’s determination that Mr. Wojnowski’s claim is “ineligible for arbitration” is a final action by FINRA.

10. The Director made a determination, *sua sponte*, under FINRA Rule 13203 that Mr. Wojnowski's claim is ineligible for FINRA arbitration. Whether this determination was an appropriate use of the Director's discretion is not at issue for the purposes of this brief. What is at issue, however, is whether a determination of Forum Denial by the Director under FINRA Rule 13203 constitutes a final action by FINRA. The Commission approved FINRA Rule 13203, granting the Director the sole discretion to make determinations under the rule, and there is no commission or appeal procedure within FINRA's By-Laws or the Code permitting appeal of the Director's determinations under FINRA Rule 13203. It is for these reasons that the Director's determination that a claim is ineligible for FINRA arbitration is a final action by FINRA.

11. Prior to the Commission's approval of rule changes in 2007, NASD Rule 10301(b) permitted the Director to deny arbitration forum "only upon approval of the NAMC or its Executive Committee."³ The Commission, in approving rule changes that resulted in current Rule 13203, emphasized that "this authority may be exercised only by the Director [...] and cannot be delegated[.]"⁴ The Director's discretionary authority, absent any permissible delegation, implies that the discretion evades review by another FINRA body, because no person other than the Director is authorized to make a determination under FINRA Rule 13203.

12. Furthermore, the Commission stated that its approval was "intended to give the Director the flexibility needed in *emergency* situations" and that "in emergency situations, it is reasonable for the Director to have the authority and flexibility to act quickly to protect the health and safety of users and administrators of the forum."⁵

³ National Arbitration and Mediation Committee (NAMC)

⁴ SEC Release No. 34-55158, at 108. It is important to note that the text "or the President of NASD Dispute Resolution" was originally included in the SEC's approval language, however, was omitted as the President of NASD Dispute Resolution is no longer included in FINRA Rule 13203.

⁵ *Id.* (emphasis added)

13. Finally, FINRA Rules are absent of any rule that provides an avenue within FINRA to challenge the Director's determination under FINRA Rule 13203. Therefore, the only appropriate administrative procedure of review is an appeal to the Commission under Section 19(d) of the Exchange Act, as there was a final action taken by FINRA.

B. FINRA prohibited or limited Mr. Wojnowski's access to the services offered by FINRA.

14. The Director's determination that Mr. Wojnowski's claim is ineligible for FINRA arbitration denies Mr. Wojnowski basic access to the FINRA arbitration forum, which FINRA offers to all of its members and Associated Persons for the resolution of industry disputes. Additionally, all FINRA members and Associated Persons are required to submit any claim for any industry dispute, including requests for expungement, to FINRA arbitration pursuant to FINRA Rule 13200, and any failure to do so is deemed conduct inconsistent with the just and equitable principle of trade and a violation of FINRA Rule 2010.⁶ Furthermore, FINRA will almost certainly request dismissal of any claim for relief sought within the courts for failure to exhaust all administrative remedies.

15. Additionally, pursuing a claim for expungement of a customer dispute in state or federal court is not a viable option for many Associated Persons aggrieved by false or misreported information publicly disseminated through BrokerCheck. FINRA is a much more cost-effective and efficient alternative to state or federal court, which is why we have the FINRA forum in the first place. The Director's decision to deny FINRA forum undermines FINRA's entire process, and it forces Associated Persons like Mr. Wojnowski to use overly burdensome avenues, such as state or federal court, to pursue expungement. The purpose of the FINRA arbitration forum is to

⁶ See Rule IM-13000 of the Code of Arbitration Procedure for Industry Disputes

provide all registered members and Associated Persons with an avenue to litigate industry disputes without having to go through state or federal court. The Director's determination that Mr. Wojnowski's claim is ineligible for FINRA arbitration not only prohibits Mr. Wojnowski's access to a fundamentally important FINRA service available to all Associated Persons and members of FINRA, it effectively denies or at a minimum, irrefutably limits access to requesting expungement relief altogether.

CONCLUSION

16. The Commission is required to review an action of a SRO if the action is final, prohibits or limits a person's access to services offered to any person by the SRO, and application by an aggrieved party is timely filed. Mr. Wojnowski is an Associated Person, who is not only provided access to the service of FINRA arbitration forum, but is required to file all industry claims within the forum pursuant to FINRA Rules 13200 and 2010. The Director's decision to deny FINRA arbitration forum to Mr. Wojnowski's claim is a final action by FINRA, which prohibits Mr. Wojnowski's access to the service of FINRA arbitration, limits his access to request any relief at all, and his application for review was filed with the Commission within 30 days of receiving notice from FINRA that the Director made the determination to deny Mr. Wojnowski forum for his claim. Therefore, the Commission has jurisdiction pursuant to Section 19(d) of the Exchange Act and should permit Mr. Wojnowski's application for review proceed to a review of the merits.

Dated: May 6, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Harris Freedman', is written over a horizontal line.

Harris Freedman, Esq.
Of Counsel
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HLBS Law
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EXHIBIT A



TO: Harris Freedman

From: Elisa Guerrero
Senior Case Specialist

Subject: FINRA Office of Dispute Resolution Arbitration Number 19-00283
Donald Anthony Wojnowski vs. E.F. Hutton & Company, Inc.

Date: January 29, 2019

FINRA has determined that the claims you have alleged in your statement of claim are not eligible for arbitration. Therefore, pursuant to the Customer Code Rule 12203(a) or Industry Code Rule 13203(a), we decline to accept your claim.

Accordingly, we closed this case without prejudice and processed a refund of your filing fees. Refunds will be sent under separate cover.

If you have any questions, please do not hesitate to contact me at 312-899-4421 or by email at Elisa.Guerrero@finra.org.

EG:eg:LC53W
idr: 07/08/2016

RECIPIENTS:
Harris Freedman, 9737 Wadsworth Parkway, Ste. G-100, Westminster, CO 80021
On Behalf Of: Donald Anthony Wojnowski

CERTIFICATE OF SERVICE

I, Olivia Peterson, on May 6, 2019, served the original and three copies of this Brief on Commission's Jurisdiction for Donald Anthony Wojnowski on:

Vanessa A. Countryman
Acting Secretary
Securities and Exchange Commission
100 F St., NE
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.

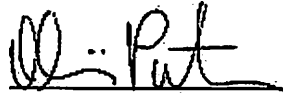
On this date, I also caused the original and three copies of this Brief on Commission's Jurisdiction for Donald Anthony Wojnowski on:

Megan Rauch
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
Email: 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.



Olivia Peterson
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