

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

In the Matter of the Application Of
Jonathan Edward Graham
For Review of Action Taken By
FINRA
File No. 3-19142

MR. GRAHAM'S BRIEF ON COMMISSION'S JURISDICTION OVER THIS APPEAL

Jonathan Edward Graham seeks Commission review of a determination by the Financial Regulatory Industry Authority ("FINRA") to deny Mr. Graham relief pursuant to the Fair Credit Reporting Act, 15 U.S.C §1681, et seq. ("FCRA") or otherwise provide a mechanism for removal of certain bankruptcy matters, civil judgments, or IRS tax liens from an individual's CRD record. Mr. Graham, 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 denial of such relief. The Commission has jurisdiction over the Director's determination and should hear Mr. Graham's appeal because the Director's determination is a final action by FINRA which prohibits or limits Mr. Graham's access to services offered by FINRA, and such prohibition is an aggrieving decision by FINRA.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

¹ 15 U.S.C. § 78s(d)

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.

2. FINRA also 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 various events against each Associated Person of a FINRA member firm. Required disclosures include bankruptcy proceedings, civil judgments, tax liens, customer complaints, regulatory events, and certain criminal convictions. FINRA requires Member Firms and Associated Persons to report all of the foregoing events, and publicly disclose these events permanently, absent narrow circumstances for expungement of certain disclosure events.³ As discussed below, FINRA does not provide any internal mechanism to seek expungement of bankruptcy proceedings, civil judgments, or tax liens.

3. The Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., regulates the dissemination of consumer credit information through consumer reports. The FCRA provides time limits that control how long certain pieces of consumer credit information may continue to be published to third-parties. The Act defines a consumer reporting agency as someone who, on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing

² <https://brokercheck.finra.org/>. Associated Persons are required to include a noticeable link to BrokerCheck on any website advertising their services.

³ FINRA rules 2080 and 8312 provide some basis for Associated Persons to request expungement of certain customer dispute or termination related disclosures.

consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. 15 USCA §1681a(f).

4. Under the Act, a “consumer report” is any written, oral, or other communication of any information by a consumer reporting agency (defined below) bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for...” The Act goes on to enumerate purposes for which a “consumer report” is used, including employment. 15 USCA §1681a(d)(1).

5. Under the Internal Revenue Code, 26 USC § 6323, Congress specifically authorizes the Secretary to file and withdraw statutory tax liens. 26 USC § 6323(j)(1) in particular states, “shall be applied as if the withdrawn notice had not been filed.”

6. On February 12, 2019, Mr. Graham, by and through counsel, sent correspondence to the FINRA Registration and Disclosure Department (“RADD”) requesting removal of the following occurrences from his CRD record, pursuant to FINRA’s obligations as a consumer reporting agency under the FCRA as well as under 26 USC § 6323(j)(1):

(1) Occurrence No. 1796198; Judgment/Lien disclosure (U4); Civil Judgment; Disposition date: 1/12/2012;

(2) Occurrence #1688857; Judgment/Lien disclosure (U4); IRS Tax Lien; Disposition date: 12/29/2010;

(3) Occurrence #1687573; Judgment/Lien disclosure (U4); Civil Judgment; Disposition date: 5/19/2011;

(4) Occurrence #1403263; Bankruptcy/SIPC/Compromise with creditors (U4);
Bankruptcy; Disposition date: 2/17/2004.

7. On March 13, 2019, Ms. Suzanne Duddy sent a response to Claimant, via his counsel, indicating that FINRA would not be removing the above-referenced occurrences absent court order.

8. On April 11, 2019, Mr. Graham timely filed his Application for Review of FINRA's Denial.

9. On May 14, 2019, the SEC sent its briefing schedule indicating that Mr. Graham's brief on jurisdiction is due on June 13, 2019, FINRA's response is due on July 15, 2019, and Mr. Graham's reply is due July 29, 2019.

10. Mr. Graham hereby timely submits his initial brief.

ARGUMENT

11. The Commission has jurisdiction over this appeal and should permit the merits of Mr. Graham'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. FINRA's determination that Mr. Graham's request for relief is denied is a final action by FINRA.

12. FINRA rules and regulations do not provide any internal mechanism for expungement of disclosure events related to bankruptcy proceedings, civil judgements, or tax liens within the FINRA dispute resolution forum. Comparatively, FINRA rules and regulations do directly provide a mechanism for which Associated Persons may request expungement of certain customer dispute allegations or termination event allegations. The standards for these expungement requests are set forth in FINRA Rules 2080 and 8312. The absence of any potential

for relief related to bankruptcy proceedings, civil judgments, and tax liens, is a definitive final action by FINRA to disallow this relief entirely within the arbitration forum.

13. Faced with the absence of a FINRA dispute resolution rule under which to bring his expungement requests, Mr. Graham asserted his right to relief under the FCRA. Mr. Graham directed his request to the FINRA Registration and Disclosure Department, the department tasked with maintaining the CRD reporting system, among other things. On behalf of FINRA's Registration and Disclosure Department, Ms. Suzanne Duddy denied Mr. Graham relief pursuant to the FCRA. Ms. Duddy indicated in her denial letter that Mr. Graham did not have any basis for relief, implying that denial was a final action.

B. FINRA prohibited or limited Mr. Graham access to the services offered by FINRA.

14. The standard set forth in *Morgan Stanley & Co.* holds that in order to find a denial of access for jurisdictional purposes, there must be a finding that an SRO has denied or limited the applicant's ability to utilize one of the fundamentally important services offered by the SRO. This is a service that is not merely important to the applicant, but central to the function of the SRO.⁴

15. FINRA's website is helpful in determining what services offered by FINRA are central to its function. Indeed, in the "About FINRA" section it is plainly stated that "FINRA is dedicated to investor protection and market integrity through effective and efficient regulation of broker-dealers." FINRA continues by stating that it meets that core mission by: (1) writing and enforcing rules that govern the activities of all registered broker-dealer firms and registered brokers in the U.S.; (2) examining firms for compliance with those rules; (3) fostering market transparency; and (4) educating investors.⁵

⁴ Morgan Stanley & Co., Inc, File No. 3-9289, Release No. 39459 (1997).

⁵ <http://www.finra.org/about>

16. To most effectively meet their mission and goals for the successful regulation of financial markets, FINRA has created a robust self-regulation system, enforced and carried out through use of arbitration in an internal dispute resolution forum. This forum is a fundamental service offered by FINRA, without which their mission would be unsuccessful.

17. FINRA's determination, made clear in the absolute lack of any mechanism for the relief being sought by Mr. Graham, that Mr. Graham's claim is ineligible for FINRA arbitration denies Mr. Graham access to the arbitration forum: a service FINRA offers to members and Associated Persons for the resolution of disputes. Ms. Duddy's letter indicates that Mr. Graham's only option for the relief he seeks is to obtain orders of expungement directly from the relevant agencies or courts themselves. While this direction from Ms. Duddy suggests that Mr. Graham should pursue an order from a court of competent jurisdiction directing expungement, each member or Associated Person, notwithstanding, is 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 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. The crucial function of an SRO is by its very name self-regulation. Mr. Graham as an Associated Person is trying to comply with FINRA's rule and standards.

18. Pursuing a claim for expungement of these disclosures in state court is not a viable option for many Associated Persons aggrieved by continued publication of disclosures in violation of the FCRA. Even if FINRA does not assert a valid defense of failure to exhaust administrative remedies, for many Associated Persons, like Mr. Graham, pursuing a claim in court is significantly

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

more expensive and, in many instances, prevents aggrieved parties from seeking any request for relief, if not available through arbitration. Moreover, the process in court is far more complicated, expensive, and time-consuming, and FINRA is the most appropriate forum to hear a claim for expungement of certain disclosures from an Associated Person's CRD record, as FINRA is the body that has developed and codified the standards and requirements for reporting and dissemination of these disclosures.

19. FINRA's determination that Mr. Graham's claim is ineligible for FINRA arbitration not only prohibits Mr. Graham'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.

20. The final determination by FINRA to deny Mr. Graham relief internally within the FINRA organization also denies him fair access to a second fundamental service of FINRA, the maintaining and reporting of fair, complete, and accurate disclosure information to third-parties through the CRD and related BrokerCheck system. Properly maintaining the CRD reporting system is unarguably a fundamental service of FINRA, without which its mission would be unsuccessful.

21. FINRA's refusal to comply with their obligations to cease publication of certain disclosure events pursuant to their duties as a consumer reporting agency under the FCRA denies Mr. Graham access to that fundamental service.

CONCLUSION

22. 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. Graham is an Associated Person, and FINRA's decision

to deny Mr. Graham access to the FINRA arbitration forum, or provide any other internal mechanism for the relief sought, is a final action by FINRA. This final action prohibits Mr. Graham access to the service of FINRA arbitration, prohibits Mr. Graham's right to the fair, complete, and accurate reporting through the CRD and BrokerCheck system, and limits his access to request any relief at all. His application for review was filed with the Commission within 30 days of receiving notice from FINRA that they were denying his requested relief. Therefore, the Commission has jurisdiction pursuant to Section 19(d) of the Exchange Act and should permit Mr. Graham's application for review proceed to a review of the merits.

Dated: June 12th, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Olivia Peterson, on June 12, 2019, I caused the original and three copies of this Brief on Commission's Jurisdiction of Jonathan Edward Graham to be served on:

Vanessa 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.

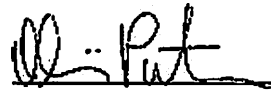
On this date, I also caused the original and three copies of this Brief on Commission's Jurisdiction of Jonathan Edward Graham to be served on:

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[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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