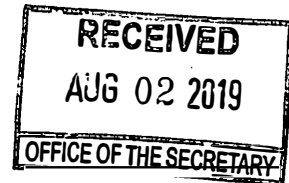


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**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

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

**MR. GRAHAM'S REPLY TO FINRA'S RESPONSE TO APPLICANT'S INITIAL  
BRIEF ON THE ISSUE OF JURISDICTION**

**INTRODUCTION**

This matter concerns FINRA'S determination 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.

The Commission has jurisdiction to review the determination by FINRA to deny Mr. Graham relief pursuant to the FCRA or any alternative mechanism for expungement. FINRA admits that the "Commission's authority to review FINRA actions is governed by § 19(d) of the Exchange Act" and that there are "four classes of actions by a self-regulatory organization ("SRO") that the Commission can review. See FINRA's Response, pg. 6; see also 15 U.S.C. § 78s(d); SEC Rule 420. The only applicable class at issue here is whether FINRA, an SRO, "prohibits or limits any person in respect to access to services offered by such organization or member thereof." *Id.*

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mr. Graham does not object to or deny the factual and procedural background as set forth in FINRA's Response, to the extent it provides factual information about Mr. Graham's background, the overview of the CRD and BrokerCheck system, the overview of FINRA Rule 8312, Mr. Graham's Cease and Desist Letter, and FINRA's response thereto.

## **ARGUMENT**

FINRA claims that FINRA's determination to deny Mr. Graham relief pursuant to the FCRA and otherwise prohibit and/or limit Mr. Graham's access to its forum "does not qualify as a prohibition or limitation of access to FINRA services...[because Mr.] Graham has not met the high bar of showing that the denial of an arbitration or other forum to consider his request for expungement of the four disclosures from his CRD provides a 'fundamentally important service' that is central to the function of FINRA." See FINRA's Response, pg. 7.

### **A. FINRA has denied Mr. Graham relief in the arbitration forum, a fundamentally important service central to FINRA's function**

In its Response, FINRA points to several instances where the Commission has held that the services were central to its operation as an SRO—terminating a member's market maker status; denying a member's request to improve communications with a trading floor; delisting the securities of an issuer—then contends that, because FINRA did not deny access to similar FINRA services, it did not deny Mr. Graham access to a fundamentally important service central to its function. See FINRA's Response, pg. 8. FINRA's argument is flawed, and relies on a conclusion that these specifically enumerated fact patterns are the only basis by which the Commission can find that there was a denial of a fundamentally important service. Of course that cannot be the case.

The service that FINRA denied Mr. Graham access to in this case is a fundamentally important service central to its function. FINRA describes on its website that, in the “About FINRA” section, 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.

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. 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.

The facts in an SEC decision cited to by FINRA, *Constantine Gus Cristo*, Exchange Act Release No. 86018, 2019 SEC LEXIS 1284, are not analogous to Mr. Graham’s matter at issue. In the *Constantine Gus Cristo* matter, the applicant argued that he was denied a fundamental service offered by FINRA when FINRA closed its investigation into his complaint without interviewing him. However, the “service” at issue in that matter was the platform pursuant to which an individual could file a complaint, and the resulting investigatory services provided by FINRA. In that matter, the applicant did in fact utilize that service, however the outcome was not as he wished. In the present matter, Mr. Graham is unable to even pursue the arbitral forum. Further, in the

*Constantine Gus Cristo* matter, the applicant also made an argument that FINRA would not preemptively deny his arbitration claim pursuant to Rule 12206. The Commission took issue with his refusal to avail himself of the arbitration forum, under the impression that his claim would be denied. In the present matter, Mr. Graham cannot even proceed with his claim at all.

**B. FINRA has denied Mr. Graham access to the maintain and reporting of fair, complete, and accurate disclosure of information to third-parties**

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 Fair Credit Reporting Act ("FCRA"). The FCRA, 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 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).

FINRA, in providing a robust system of self-regulation of financial markets, publishes and disseminates disclosure information to third-parties. Surely FINRA would not argue that ensuring that information reported is fair, complete, and accurate is not an important piece of providing that fundamental service. In denying to honor their obligations pursuant to the FCRA, FINRA is denying Mr. Graham relief to a fundamentally important service offered by FINRA.

**CONCLUSION**

The Commission has jurisdiction to review FINRA's determination to deny Mr. Graham relief pursuant to the FCRA, or provide any other internal mechanism for the relief sought, as a final action that prohibits or limits Mr. Graham's access to services offered by FINRA pursuant to §19(d) of the Exchange Act.

Dated: July 29, 2019

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, Olivia Peterson, on July 29, 2019, I served the original and three copies of Mr. Graham's Reply to FINRA's Response to Applicant's Initial Brief on the Issue of Jurisdiction on:

Vanessa 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 served the original and three copies of Mr. Graham's Reply to FINRA's Response to Applicant's Initial Brief on the Issue of Jurisdiction on:

Alan Lawhead, Esq.  
Vice President and Director – Appellate Group  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
Email: [nac.casefilings@finra.org](mailto:nac.casefilings@finra.org)

**(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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