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



In the Matter of the Application Of
DUSTIN AIGUIER
For Review of Action Taken By
FINRA
File No. 3-19216

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

INTRODUCTION

1. Dustin Aiguier seeks Commission review of a determination by the Director of FINRA (the "Director") in its refusal to submit a motion filed by Mr. Aiguier to the panel for review. The Director refused to forward the motion claiming that the submission did not comply with FINRA Rule 13905.

2. Mr. Aiguier, 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.

3. The Commission has jurisdiction over this appeal because the Director's determination is a final action by FINRA which prohibits or limits Mr. Aiguier's access to services offered by FINRA.

¹ 15 U.S.C. § 78s(d)

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

4. FINRA is a not-for-profit 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.

5. 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. FINRA provides only one viable remedy for almost all associated persons to remove false or misreported customer complaints: expungement requests, pursuant to FINRA Rule 2080.

6. On September 21, 2017, Mr. Aiguier, by and through counsel, filed two Statement of Claims seeking FINRA arbitration (originally case numbers 17-02512 and 12-02513) against NYLife Securities (“Respondent”) requesting expungement of four customer complaints from his CRD and BrokerCheck records: (1) Occurrence No. 1814747 with underlying customers Claudia and Michael O’Connor (the “O’Connor Occurrence”); (2) Occurrence No. 1822342 with underlying customers Martha and Richard Anderson (the “Anderson Occurrence”); (3) Occurrence No. 1833139 with underlying customers Mary and Richard Clayton (the “Clayton Occurrence”);

² 15 U.S.C. 78o-3(i)(1)

and (4) Occurrence No. 1647025 with underlying customer Molly McGinness (the “McGinness Occurrence”). These two FINRA case numbers were eventually consolidated into one action: 17-02512.

7. Once discovery was completed, the day before the hearing on the merits, Mr. Aiguier discovered exculpatory documents that Respondent failed to produce. The hearing was continued so that Mr. Aiguier could review these documents. Mr. Aiguier filed a motion to compel, and Respondent objected stating that they “withheld nothing from its production.” The hearing proceeded on June 19, 2018 and an award was issued on July 9, 2018 recommending expungement of the O’Connor and Anderson Occurrences, and denied expungement for the Clayton and McGinness Occurrences.

8. On May 4, 2019, Mr. Aiguier’s counsel was *again* made aware of exculpatory documents that Respondent failed to produce.

9. On May 7, 2019, Mr. Aiguier filed a motion requesting that the panel (1) allow Mr. Aiguier to supplement the record with the exculpatory evidence, (2) for an order that Respondent comply with their discovery obligations, and (3) to afford Mr. Aiguier a fair and just opportunity to present his case (“Mr. Augier’s Motion”). Respondent objected, and Mr. Aiguier filed a response.

10. On May 22, 2019, the Director issued a notice refusing to send Mr. Aiguier’s Motion to the panel for review claiming that it did “not comply with the grounds enumerated in Rule 13905” of the FINRA Rules.

11. FINRA Rule 13905 states that:

- (a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:
 - (1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 13904.

12. On June 21, 2019, Mr. Aiguier timely filed his Application for Review of FINRA's action and the Director's determination.

13. On July 23, 2019, the SEC sent its Order Scheduling Briefs indicating that Mr. Aiguier's brief on jurisdiction is due on August 22, 2019, FINRA's response is due on September 23, 2019, and Mr. Aiguier's reply brief is due October 7, 2019.

14. Mr. Aiguier hereby timely submits his brief on the SEC's jurisdiction to over this appeal.

ARGUMENT

15. The Commission has jurisdiction over this appeal and should permit the merits of Mr. Aiguier's appeal to be heard. The Commission's authority to review FINRA actions is governed by Section 19(d) of the Exchange Act. Specifically, the Commission is granted authority

to review the action of an SRO (such as FINRA) where the SRO's action "prohibits or limits and person in respect to access to services offered by such organization". 15 U.S.C. § 78s(d)(1), (2).³

A. The Director's refusal to submit Mr. Aiguier's Motion to the panel after its determination that the submission "did not comply with the grounds in Rule 13905" is a final action by FINRA.

16. The Director made a determination, *sua sponte*, that Mr. Aiguier's motion "did not comply with the grounds in Rule 13905" for submissions of documents after a case has closed and refused to submit the Motion to the panel. Whether this determination was an appropriate use of the Director's discretion is not proper for this particular brief limited to the Commission's jurisdiction. What is at issue, however, is whether a determination by the Director under FINRA Rule 13905 lacks a provision permitting a petition for review by or appeal to an authority within FINRA, so as to render the Director's determination denying relief a final action. The FINRA Rules are absent of any rule that provides an avenue to request reconsideration or challenge the Director's determination under FINRA Rule 13905. By not providing any avenue within the FINRA Rules for a denied party to challenge the Director's decision, FINRA and the Commission intended the Director's FINRA Rule 13905 determinations to be final actions by FINRA. Therefore, the only appropriate administrative procedure of review is an appeal to the Commission under Section 19(d) of the Exchange Act.

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

17. The Director's refusal to submit Mr. Aiguier's Motion to the panel denies Mr. Aiguier access to the arbitration forum: a service FINRA offers to members and associated persons for the resolution of disputes. At issue here is Mr. Aiguier's right to a fair hearing in order to seek

³ There are three additional categories where the Commission has jurisdiction for review that are not applicable to this case.

expungement of a customer dispute that is permanently brandished on his CRD and BrokerCheck records, and affecting his business, reputation, and livelihood.

18. As part of its statutory mandate under the Exchange Act, FINRA is required to collect and maintain registration information about member firms and associated persons on the CRD. See 15 U.S.C. § 78o-3(i)(1)(A). FINRA is also required to make certain information publicly available on the BrokerCheck platform, such as the customer dispute allegations made by the underlying customers at issue here. The Information contained on the CRD and BrokerCheck systems serve several important functions: it is relied upon by various people and entities, such as investors when deciding which broker to hire; by regulators, who use the information to fulfill their regulatory responsibilities; and by prospective broker-dealers, who rely on the information when making hiring decisions. Fundamental to the integrity and usefulness of the CRD and BrokerCheck systems is that the information contained on those systems are *accurate*. The SEC and FINRA thereby established a right for its members and associated persons to seek expungement of information from the CRD and BrokerCheck systems. See FINRA Rule 2080, 12805, and 13805. Therefore, maintaining an accurate CRD and BrokerCheck systems are central to the function of FINRA.

19. FINRA also acknowledges on its website that resolving securities disputes, including the industry dispute Mr. Aiguier filed, is one of the five activities FINRA performs in order to accomplish their mission:

To accomplish our dual mission of investor protection and **market integrity**, FINRA performs the following activities every day:

...

5. Resolve securities disputes

... we administer the largest forum specifically designed to **resolve securities-related disputes** between and among investors, securities firms and individual brokers.

Our dispute resolution forum is the largest in the country for the securities industry, handling nearly 100 percent of securities-related arbitration[.]⁴

FINRA also proudly touts that it “provides the first line of oversight for broker-dealers and the first line of defense for investors ... [and] regulates both the firms and professionals selling securities[.]”⁵ Part of the regulation, oversight, and defense provided by FINRA is the CRD repository and operation of the BrokerCheck website. FINRA claims that it had 629,847 registered representatives as of 2018⁶ and requires that BrokerCheck be a readily apparent reference and hyperlink on the firm’s initial website or any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors.⁷ With the pervasiveness of the BrokerCheck website, and the information contained therein, and because FINRA requires disclosure of most customer disputes regardless of their merit, an expungement process was specifically set up to ensure the integrity of the system and to allow the hundreds of thousands of representatives to remove claims that are factually impossible, clearly erroneous, false, or where they were not involved with the allegations made. See FINRA Rule 2080. Therefore, a request for expungement of information from the repository surely resides within FINRA’s oversight of the securities industry and is a fundamental aspect of their mandate and central to their function.

20. The Director’s refusal to submit a motion to the panel not only prohibits Mr. Aiguier’s access to a fundamentally important FINRA service available to all associated persons

⁴ <http://www.finra.org/about/what-we-do>, emphasis added.

⁵ <http://www.finra.org/industry/oversight>

⁶ <http://www.finra.org/newsroom/statistics>

⁷ FINRA Regulatory Notice 15-50 (June 6, 2016); FINRA Rule 2210.

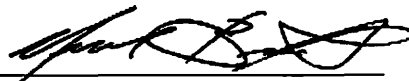
and members of FINRA, it effectively denies or at a minimum irrefutably limits access to requesting expungement relief altogether. Respondent was required pursuant to FINRA rules to comply with their discovery obligations, and instead, committed an egregious error in failing to produce exculpatory evidence that significantly affected Mr. Aiguier's right to a fair hearing on the merits. The determination as to whether Mr. Aiguier's Motion has merit and is entitled to relief should be determined by the panel equipped to hear such a claim, and not summarily denied by the Director of FINRA based on its incorrect interpretation of the rules.

CONCLUSION

21. The Commission has jurisdiction to review the action by the Director of FINRA as this action prohibits or limits Mr. Aiguier's access to services offered by FINRA. See § 19(d) of the Exchange Act.

Dated: August 20, 2019.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Olivia Peterson, on August 20, 2019, served the original and three copies of Mr. Aiguier's Brief on Commission's Jurisdiction Over This Appeal on:

Vanessa A. Countryman, Acting 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 served the original and three copies of Mr. Aiguier's Brief on Commission's Jurisdiction Over This Appeal on:

Megan Rauch
Associate General Counsel
FINRA
1735 K Street, NW
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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.



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