

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

---

In the Matter of the Application of  
  
KENT VINCENT PEARCE  
  
For Review of Action Taken by  
  
FINRA  
  
File No. 3-19228

---

**MR. PEARCE’S REPLY BRIEF IN SUPPORT OF THE  
COMMISSION’S JURISDICTION OVER HIS APPLICATION FOR REVIEW**

**INTRODUCTION**

Applicant, Mr. Kent Vincent Pearce (“Mr. Pearce”) seeks Commission review of a determination by Financial Industry Regulatory Authority, Inc. (“FINRA”) to deny Mr. Pearce access to its arbitration forum under FINRA Code of Arbitration Procedure for Customer Disputes Rule 12203(a) or FINRA Code of Arbitration Procedure for Industry Disputes Rule 13203(a) (collectively and/or individually, “FINRA Rules”).

Mr. Pearce, 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”)<sup>1</sup>, challenging FINRA’s determination that Mr. Pearce’s claim is ineligible for arbitration in FINRA’s Dispute Resolution Forum (“FINRA’s Forum”). On November 2, 2021, Mr. Pearce submitted his Brief in Support of Application for Review (“Pearce’s Brief”) in response to the

---

<sup>1</sup> 15 U.S.C. § 78s(d).

Commission’s Order Requesting Additional Briefing issued on September 13, 2021 (“Additional Briefing Order”). On November 17, 2021, FINRA submitted a Brief in Opposition to the Application for Review (“FINRA’s Brief”). Mr. Pearce now timely submits his Reply Brief in Support of the Application for Review for consideration by the Commission.

## ARGUMENT

### **MR. PEARCE’S REPLY TO FINRA’S ASSERTIONS IN ITS INTRODUCTION AND FACTUAL AND PROCEDURAL BACKGROUND SECTIONS**

FINRA mischaracterizes Mr. Pearce’s expungement request in his Statement of Claim (R. at 1-9<sup>2</sup>) as an attempt to “collaterally attack” the award from the underlying customer arbitration proceeding. *FINRA’s Brief* at 1-2. However, Mr. Pearce’s expungement request in his Statement of Claim does not seek to *overturn* the underlying arbitration award and makes no claim to do so. Instead, Mr. Pearce sought removal of the derogatory information that *FINRA* published, and continues to publish, on his BrokerCheck and CRD records. FINRA’s continual attempts to unduly narrow the focus of the issues on this appeal by claiming that Mr. Pearce’s “exclusive remedy was to petition an appropriate court to vacate, modify, or correct the award” should be disregarded. *FINRA’s Brief* at 1-2. The issue is not whether Mr. Pearce previously had a right to vacate, modify, or correct the award, but whether FINRA should be permitted to now prohibit or limit Mr. Pearce access to its Forum for a claim of expungement. Even if expungement had been properly addressed in the underlying customer arbitration (which Mr. Pearce contends that is not the case), there is no codified rule that prevents Mr. Pearce from requesting expungement a second time. FINRA’s only authority in support of its contention is a citation to the FINRA arbitration *guide*, which is not

---

<sup>2</sup> “R. at \_\_\_” refers to the page in the Certified Record filed by FINRA on July 10, 2019.

binding authority.<sup>3</sup> Accordingly, the Commission has jurisdiction to review Mr. Pearce's Application for Review.

**MR. PEARCE'S REPLY TO FINRA'S ASSERTIONS IN ITS ARGUMENT SECTION**

**A. Mr. Pearce was not afforded full and fair access to FINRA's arbitration service for expungement.**

FINRA claims that "the record flatly contradicts" Mr. Pearce's claim that he was denied access to FINRA's arbitration service for his expungement claim because of the one sentence request for expungement imbedded in the Statement of Answer<sup>4</sup> and because the underlying arbitration award states that "[a]ny and all relief not specifically addressed herein, including punitive damages, is denied in its entirety".<sup>5</sup> *See, FINRA's Brief* at 6. Notably however, FINRA fails to address Mr. Pearce's assertion that he was not afforded an adequate opportunity to be heard on his request for expungement. It is clear, based on the findings in the underlying award, that the underlying arbitration panel addressed the customer's claims for damages, but it did not meaningfully address Mr. Pearce's request for expungement. FINRA seemingly implies (without any supporting evidence) that Mr. Pearce's recollection of the events is not credible, merely because they happened years ago. *See, FINRA's Brief* at 8. However, Mr. Pearce swore under oath that the contents of his Affidavit were "complete and accurate to the best of [his] knowledge" and submitted evidence that his request for expungement was not addressed at the underlying arbitration hearing. *See, Affidavit*. On the contrary, FINRA has failed to proffer any evidence refuting Mr. Pearce's testimony other than its speculation and implications, all of which should be disregarded here.

---

<sup>3</sup> FINRA states in its Arbitration Guide that "[w]hen an arbitration panel has issued an award denying a broker's expungement request, the broker may not request expungement in another arbitration case." Pg. 79 of FINRA's Arbitration Guide. Notably, no FINRA rule or applicable authority is cited for this statement, as none exist.

<sup>4</sup> *See, R.* at 22-23.

<sup>5</sup> *See, R.* at 75- 81.

The evidence shows that Mr. Pearce has not been provided an opportunity to be heard on the issue of expungement, nor has a panel examined relevant facts in light of FINRA's (or the then-applicable NASD<sup>6</sup>) expungement rules.<sup>7</sup> An arbitration hearing lacks fundamental fairness where a party did not have an "opportunity to be heard and to present relevant and material evidence and argument before the decision makers." *Sheldon v. Vermonty*, 269 F.3d 1202, 1207 (10<sup>th</sup> Cir. 2001). Therefore, FINRA exceeded its authority and prohibited or limited Mr. Pearce's access to a fundamental service in violation of the Exchange Act.

**B. The Commission's holding in the *Dustin Tylor Aiguier* and *John Boone Kincaid* matters are not applicable here.**

FINRA claims that the holdings in *Aiguier* and *Kincaid* are applicable here because, "[I]ike the applicants in those cases, Pearce requested expungement of all information related to the Underlying Customer Arbitration." *FINRA's Brief* at 7-8. However, FINRA evidently skipped over the fact that Mr. Pearce attested, under oath, that he did *not* have a meaningful opportunity to be heard on his request for expungement, as the applicants in *Aiguier* and *Kincaid* had. *See*, Affidavit. The arbitrator in *Kincaid* discussed, reviewed, and sought additional briefing relating to a procedural rule concerning the requested expungement relief. As noted by the Commission, "Kincaid through his counsel, actively participated in that service."<sup>8</sup> Kincaid was given an opportunity to be heard on the matter of expungement. Similarly, in *Aiguier*, the claimant was permitted the opportunity to be heard during a full expungement hearing on the merits of his expungement requests, but the Commission determined there was no jurisdiction to hear his

---

<sup>6</sup> FINRA asserts in its Brief that "neither FINRA Rule 2080 nor Customer Code Rule 12805 had been adopted at the time of the Underlying Customer Arbitration." *FINRA Brief* at 9. While that is technically true, NASD Rules 2130 and 13805 were in effect, which contained nearly identical language to FINRA Rule 2080.

<sup>7</sup> *See, e.g.*, FINRA Rules 2080 and 13805; *see also*, <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

<sup>8</sup> *See, In the Matter of the Application of John Boone Kincaid III for Rev. of Action Taken by Finra*, Release No. 87384 (Oct. 22, 2019).

application for review because FINRA denied Aiguier “an attempt to obtain a new hearing *on expungement*,” a hearing that Mr. Pearce has never had.<sup>9</sup>

### CONCLUSION

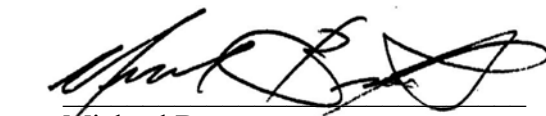
Mr. Pearce has a clear statutory basis under the Exchange Act for the Commission’s review of his application, as FINRA limited or prohibited his access to its forum for the fundamental service of expungement arbitration. Mr. Pearce was never afforded a full and fair opportunity to be heard on his expungement claim and FINRA limited or prohibited his ability to do so. Even if Mr. Pearce *did* have an opportunity to be heard on his expungement claim, there is no FINRA rule that prohibits him from seeking expungement at a later date, under equitable grounds. The Commission should therefore remand Mr. Pearce’s claim to the FINRA Forum for review of the expungement claim in front of an arbitration panel.

Dated: December 1, 2021

Respectfully submitted,



Owen Harnett,  
Managing Attorney  
T: (720) 515-9069  
E: owen.harnett@hlbslaw.com  
HLBS Law  
9737 Wadsworth Parkway, Suite G-100  
Westminster, CO 80021



Michael Bessette,  
Managing Attorney  
T: (720) 432-6546  
E: michael.bessette@hlbslaw.com  
HLBS Law  
9737 Wadsworth Parkway, Suite G-100  
Westminster, CO 80021

<sup>9</sup> See, Exchange Act Release No. 88953, 2020 SEC LEXIS 1430, at \*2-3 (May 26, 2020) (emphasis added).

**CERTIFICATE OF SERVICE**

I, James Bellamy, certify that on December 1<sup>st</sup>, 2021, I caused a copy of the foregoing Reply Brief in the matter of the Application for Review of Kent Vincent Pearce, Administrative Proceeding File No. 3-19228 to be filed through the SEC's eFAP system and served by electronic mail on:

The Office of the Secretary  
Securities and Exchange Commission  
100 F St., NE  
Room 10915  
Washington, D.C. 20549-1090

Celia Passaro  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006  
[Celia.Passaro@finra.org](mailto:Celia.Passaro@finra.org)

Megan Rauch  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006  
[megan.rauch@finra.org](mailto:megan.rauch@finra.org)

Alan Lawhead  
Vice President and Director – Appellate  
Group  
Office of General Counsel  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006  
[alan.lawhead@finra.org](mailto:alan.lawhead@finra.org)

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

Jennifer Brooks  
Associate General Counsel  
FINRA  
1735 K Street, NW  
Washington, D.C. 20006  
[jennifer.brooks@finra.org](mailto:jennifer.brooks@finra.org)

**[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.

/s/James Bellamy  
James Bellamy  
9737 Wadsworth Pkwy Suite G-100  
Westminster, CO 80021