

FACSIMILE TRANSMISSION

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Note:

3-19588_2021-11-01_Davis Unopposed Motion to Adduce Additional Evidence with Attached Exhibit 1 Affidavit

Date: 11/01/2021

Pages: 11

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

In the Matter of the Application of
ALTON THEODORE DAVIS, JR.
For Review of Action Taken by
FINRA
File No. 3-19588

MR. DAVIS' UNOPPOSED MOTION TO ADDUCE ADDITIONAL EVIDENCE

I. INTRODUCTION

Applicant, Alton Theodore Davis, Jr., (“Davis”), moves the Commission for leave to adduce additional evidence pursuant to SEC Rule of Practice 452. Through his Application, Mr. Davis seeks for the Commission to review FINRA’s decision to deny Mr. Davis access to its arbitration forum to seek expungement of a customer dispute disclosure. Mr. Davis now requests to introduce as additional evidence, in this case, an Affidavit (the “Affidavit” attached as **Exhibit 1**) to aid in addressing the Commission’s questions raised in the Order Requesting Additional Briefing dated September 13, 2021 (“Additional Brief Order”). The Commission should permit the introduction of Exhibit 1 to the record of this case because it is material and there were reasonable grounds for failing to adduce this evidence previously. Mr. Davis’ counsel has conferred with FINRA’s counsel, and this motion is unopposed.

II. FACTUAL BACKGROUND

Mr. Davis is a resident of Naples, Florida, and has been a financial services professional since November 1987. Between July of 1993 and November of 2000, Mr. Davis was a financial advisor registered with Citigroup Global Markets Inc., in New York, New York. In or around February of 1992, Mr. Davis began giving investment advice to Mr. John Veres (“Mr. Veres”) and Mrs. Vera Veres (“Mrs. Veres”) (together, “Mr. and Mrs. Veres”). Mr. and Mrs. Veres asked for recommendations on tax-free municipal bonds and utilities. Mr. Davis recommended a variety of investment options as part of a balanced, diversified portfolio, including an investment-grade, tax-free municipal bond (the “Veres Bond”). Mr. Davis explained to Mr. and Mrs. Veres the details of the Veres Bond, which was, at the time, AAA-rated and insured, tax-free. Mr. and Mrs. Veres purchased the Veres Bond.

In early February of 1994, the U.S. Federal Reserve began raising short-term interest rates. The result was a worldwide decline in bond values throughout 1994 which inflicted heavy damage on financial companies, hedge funds, and bond mutual funds. Due to these events the value of the Veres Bond declined.

On June 29, 1994, Mr. and Mrs. Veres alleged “misrepresentation (fraud) and excessive trading.” They sought compensatory damages in the amount of \$25,160. On October 11, 1996, Mr. and Mrs. Veres filed for arbitration with FINRA’s predecessor, the National Association of Securities Dealers (NASD) (Case #96-04385). On August 20, 1997, following a hearing, the arbitrators awarded Customers compensatory damages in the amount of \$17,885.71, less than the amount sought.

On September 30, 2019, Mr. Davis submitted a Statement of Claim to the Financial Industry Regulatory Authority (“FINRA”) Office of Dispute Resolution requesting a hearing for the expungement of his CRD record as it relates to one customer dispute disclosure, occurrence number 190544 (“the Occurrence”). On October 3, 2019, Counsel for Mr. Davis received notice that the FINRA Office of Dispute Resolution (“ODR”) denied him access to the FINRA forum for arbitration, claiming that the Director determined that Mr. Davis’ request for expungement of the Occurrence “is not eligible for arbitration,” citing Industry Code Rule 13203(a).

In response, Mr. Davis submitted his Application for Review with the Commission. FINRA then moved to consolidate Mr. Davis’s Application with other Applications for Review before the Commission and moved to stay further briefing so that the Commission may first resolve the “common issue” whether it has jurisdiction under Section 19(d) of the Securities Exchange Act of 1934 to review FINRA’s determination that a claim for expungement of a prior adverse arbitration award is not eligible for arbitration. The Commission granted the consolidation and found in favor of briefs submitted by Counsel that the Commission has jurisdiction.

After further briefing that followed, the Commission has severed Mr. Davis Application from the *Consolidated Arbitration Applications Matter* and is now requesting an additional briefing on jurisdiction. The issue revolves around the matter of whether FINRA’s action prohibited access to a fundamentally important service that it offers to Mr. Davis for expungement and whether FINRA’s denial of forum was inconsistent with the Exchange Act.

III. ARGUMENT

Pursuant to SEC Rule of Practice 452, the Commission may grant this Motion if Mr. Davis shows that the evidence is material and there were reasonable grounds for failure to adduce such evidence previously. 17 CFR § 201.452. The Affidavit is material and there are reasonable grounds for not adducing the evidence previously. Thus, it should be admitted into evidence.

The Affidavit is material because it addresses questions raised by the Commission in its Additional Brief Order and tends to prove Mr. Davis's assertion that he was prohibited access to FINRA's Arbitration Forum regarding the issue of expungement. Specifically, the Affidavit explains that Mr. Davis did not have an adequate opportunity to be heard with respect to his request for expungement in the underlying arbitration proceeding, a central issue to his Application for Review. *See*, Exhibit 1.

There were reasonable grounds not to adduce the Affidavit previously because Mr. Davis only recently issued its Additional Brief Order requesting additional information from the parties. Additionally, the question as to whether Mr. Davis previously sought expungement has not been a central issue in this appeal, as the crux of Mr. Davis's Application for Review sought Commission review of FINRA's prohibition or limitation of his access to the use of its arbitration forum. *See*, Opening Joint Brief at 7 (“[t]here can be no dispute that none of the Applicants ever filed a request for expungement, nor are any of the Applicants subject to an award or decision denying expungement from an arbitration, state, or federal government” as well as the fact that “[a]n examination of each and every one of the awards at issue in this Consolidation Arbitration Application shows that none of the arbitrators considered or determined the issue of

whether the disclosure has regulatory value pursuant to the FINRA standards for expungement. . .”). Finally, FINRA does not oppose the admission of the Affidavit as evidence.

In conclusion, the Affidavit is material and there were reasonable grounds for not previously introducing the evidence. Mr. Davis filed this Motion to Adduce promptly. Therefore, the Commission should grant Mr. Davis’s Motion.

Dated: November 1, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, James Bellamy, certify that on November 1, 2021, I caused a copy of the foregoing Unopposed Motion to Adduce Additional Evidence with Attached Exhibit 1 Affidavit in the matter of Application for Review of Alton Theodore Davis, Jr., Administrative Proceeding File No. 3-19588 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

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[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

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Westminster, CO 80021


EXHIBIT 1

AFFIDAVIT OF ALTON DAVIS

I, Alton Theodore Davis Jr., do hereby swear that the information contained herein is complete and accurate to the best of my knowledge. I do depose and say:

1. My name is Alton Theodore Davis Jr. and I reside at [REDACTED] Naples, FL
2. I am a registered financial advisor registered with Morgan Stanley in Naples, Florida.
3. On or about September 24, 1996, Mr. John Veres ("Mr. Veres") and Mrs. Vera Veres ("Mrs. Veres") ("Underlying Claimants") submitted a Statement of Claim filed in the case captioned NASD # 96-04385, *In the Matter of the Arbitration Between John Veres and Vera Veres v. Smith Barney Incorporated and Alton T. Davis* ("Underlying Action").
4. Throughout the Underlying Action, I was represented by Smith Barney Incorporated ("Smith Barney") counsel and not represented by an independent counsel of my choosing.
5. I denied the merits of the allegations made by the Underlying Claimants in the Underlying Action then and still do to this day.
6. Smith Barney submitted on my behalf in its Statement of Answer a request for expungement of references to the Underlying Action from my Central Registration Depository ("CRD") record.
7. On or about May 30, 1997 to June 10, 1997, an arbitration hearing was conducted ("Hearing") to address the Underlying Claimants' causing of action.
8. I was present and testified at the Hearing.
9. At the Hearing, I do not recall my request for expungement of the Underlying Action ever being addressed by anyone nor do I recall the standard for expungement being addressed.
10. On or about August 19, 1997, the arbitration panel in the Underling Action issued an award ("Award") finding me and Smith Barney jointly and severally liable for compensatory damages in the sum of \$17,885.71. The Underlying Claimants were requesting compensatory damages in the amount of \$25,160.
11. No additional hearing to address my request for expungement was ever held.

I, Alton Theodore Davis, Jr., hereby declare the above affidavit was written and signed absent duress, and in good faith.

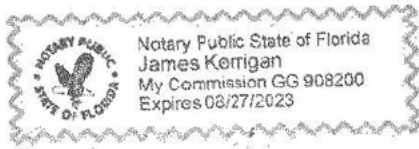

Alton Theodore Davis, Jr.


10/29/21
Date

STATE OF FLORIDA, COUNTY OF COLLIER

On this 29 day of October, 2021, before me, ALTON DAVIS, personally appeared (or satisfactorily proven) to be the person whose name is subscribed in the within Affidavit, and, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit and that the matters stated herein are true to the best of his/her information, knowledge, and belief.

In witness whereof I hereunto set my hand and official seal.





Notary Public
NOTARY

Title

My commission expires 8/27/2023