

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

In the Matter of the Application of
JENNIFER ANNE JOHNSTON
For Review of Action Taken by
FINRA
File No. 3-20120

MS. JOHNSTON’S UNOPPOSED MOTION TO ADDUCE ADDITIONAL EVIDENCE

I. INTRODUCTION

Applicant, Jennifer Anne Johnston (“Ms. Johnston”), respectfully moves the Commission for leave to adduce additional evidence pursuant to SEC Rule of Practice 452. Through her Application for Review, Ms. Johnston seeks for the Commission to review FINRA’s decision to deny Ms. Johnston access to its arbitration forum to seek expungement of a customer dispute disclosure. Ms. Johnston 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 its Order Requesting Additional Briefing dated August 9, 2023 (“Additional Briefing 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. Ms. Johnston’s counsel has conferred with FINRA’s counsel, and this motion is unopposed.

II. FACTUAL BACKGROUND

Ms. Johnston has been working in the securities industry since February of 1994. In May of 2005, while Ms. Johnston was registered with Banc of America Investment Services, Inc. (“BAIS”), she began working with Mr. Paul Mechetti and Ms. Arlene Mechetti (collectively, the “Mechettis”). As of December 16, 2008, Ms. Johnston was no longer registered with BAIS, and the Mechettis did not continue their working relationship with Ms. Johnston after her departure. In or around April 22, 2009, the Mechettis filed a customer complaint, alleging unsuitable investment recommendations and misrepresentation. This complaint was reported to Ms. Johnston’s Central Registration Depository (“CRD”) and BrokerCheck records as occurrence no. 1455733 (the “Occurrence”).

In early 2010, an arbitration hearing (“Hearing”) was held addressing the Mechettis’ complaint, where an award was issued (“Award”). Ms. Johnston was not informed of the hearing date and, as such, was not aware of her ability to appear and testify if she wished. Ms. Johnston was further unaware that a claim for expungement of the Occurrence was brought until after the Award was issued on July 22, 2010. Pursuant to the Award, BAIS was found liable for \$5,500 in compensatory damages payable to the Mechettis. Ms. Johnston was not found liable for compensatory damages but was jointly and severally liable with BAIS to pay the Mechettis \$212.50 to reimburse the Mechettis one-half of the filing fee paid to FINRA Dispute Resolution. BAIS paid the entire \$212.50 amount.

After the hearing was concluded and the Award was issued, Ms. Johnston was informed by BAIS’s counsel of the existence of the Award, and that she was not found liable, that all claims against her were denied, that no action was taken against her, and that a request for expungement that was made on her behalf was denied.

On August 25, 2020, Ms. Johnston submitted a Statement of Claim to FINRA requesting a hearing for the expungement of disclosures published on her CRD record as it relates to the Occurrence and one other customer dispute as well. On August 26, 2020, Ms. Johnston received notice that the Director of FINRA Office of Dispute Resolution (“the Director”) issued a partial denial of Ms. Johnston’s Statement of Claim, denying her access to the FINRA forum for arbitration for the Occurrence and claiming that the Director determined that Ms. Johnston’s request for expungement of the Occurrence “is not eligible for arbitration,” citing Industry Code Rule 13203(a).

In response, Ms. Johnston submitted her Application for Review with the Commission. After the Commission found jurisdiction over this appeal and briefing by the parties were submitted, the Commission issued its Additional Briefing Order requesting specific questions be addressed by the parties. To aid in addressing the Commission’s Additional Briefing Order, Ms. Johnston hereby seeks to adduce additional evidence as outlined in this Motion.

III. ARGUMENT

Pursuant to SEC Rule of Practice 452, the Commission may grant this Motion if Ms. Johnston 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 Briefing Order and tends to prove Ms. Johnston’s assertion that she was prohibited access to FINRA’s Arbitration Forum regarding the issue of expungement. Specifically, the Affidavit explains that Ms. Johnston did not have an adequate opportunity to be heard with respect

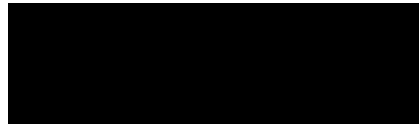
to the request for expungement that was made on her behalf in the underlying arbitration proceeding.

There were reasonable grounds not to adduce the Affidavit previously because the Commission only recently issued its Additional Briefing Order requesting this additional information from her. Additionally, the question as to whether Ms. Johnston previously sought expungement has not been a central issue in this appeal, as the crux of Ms. Johnston's Application for Review sought Commission review of FINRA's prohibition or limitation of her access to the use of its arbitration forum.

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

Dated: September 8, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Donna Montemayor, certify that on September 8, 2023, caused a copy of the foregoing Unopposed Motion to Adduce Additional Evidence in the matter of the Application for Review of Jennifer Anne Johnston Administrative Proceeding File No. 3-20120 to be filed through the SEC's eFAP system and served by electronic mail on:

The Office of the Secretary
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[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

/s/ *Donna Montemayor*

Donna Montemayor

