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March 8, 2021

VIA EMAIL

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F. St., NE
Room 10915
Washington, D.C. 20549-1090
apfilings@sec.gov

**RE: In the Matter of the Application for Review of Cynthia Mary Couyoumjian
Administrative Proceeding No. 3-20154**

Dear Ms. Countryman:

Enclosed please find FINRA's Opposition to the Application for Review in the above-referenced matter.

Sincerely,

/s/Megan Rauch
Megan Rauch

Enclosures

cc: Michael Bessette, Esq. (by email)

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

In the Matter of the Application of
CYNTHIA MARY COUYOUMJIAN
For Review of Action Taken by
FINRA
Administrative Proceeding No. 3-20154

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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March 8, 2021

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

In the Matter of the Application of
CYNTHIA MARY COUYOUMJIAN
For Review of Action Taken by
FINRA
Administrative Proceeding No. 3-20154

FINRA’S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

This matter concerns Cynthia Mary Couyoumjian’s attempt to commence a second proceeding in FINRA’s arbitration forum to expunge disclosures of eight customer complaints from FINRA’s Central Registration Depository (“CRD”) and BrokerCheck®. Couyoumjian lost her first bid to expunge the customer complaints in FINRA’s arbitration forum. A FINRA arbitrator considered the pleadings, testimony, and evidence, including information provided by former customers, and denied Couyoumjian’s request for expungement on the merits.

Couyoumjian did not accept the arbitrator’s decision. Instead, Couyoumjian (a California resident) filed a petition to vacate the arbitrator’s award in a Colorado state court. Couyoumjian’s petition for vacatur alleged, essentially, that the arbitrator’s decision should be overturned because the arbitrator reached the wrong result. There was no hearing on the merits; the state court did not receive evidence from Couyoumjian’s customers or FINRA. In a pro forma order that did not even state the grounds for vacatur, the state court granted Couyoumjian’s unopposed petition and vacated the arbitrator’s award.

With the state court’s vacatur order in hand, Couyoumjian filed a new statement of claim in FINRA’s arbitration forum seeking expungement of the same customer complaints. The Director of FINRA’s Dispute Resolution Services (the “Director”) did not accept Couyoumjian’s second statement of claim because she already arbitrated her expungement claims on the merits in FINRA’s arbitration forum. Couyoumjian then filed an application for review seeking to compel FINRA to allow her to relitigate her expungement claim.

The Commission should dismiss Couyoumjian’s application for review because it lacks jurisdiction to review the Director’s determination not to accept Couyoumjian’s statement of claim. FINRA did not deny Couyoumjian access to FINRA’s arbitration service; she accessed the service once and fully litigated her expungement claims to a final award. Because Couyoumjian was not denied access to FINRA’s arbitration service, there is no FINRA action subject to review under Section 19(d) of the Securities Exchange Act of 1934 (“Exchange Act”).

I. FACTUAL BACKGROUND

A. Couyoumjian

Couyoumjian entered the securities industry in 1986. RP 33.¹ Between December 2003 and July 2004, Couyoumjian was registered with LPL Financial LLC (f/k/a Linsco/Private Ledger Corp.) (“LPL”). RP 32-33. From July 2004 to April 2010, Couyoumjian was associated with First Allied Securities, Inc (“First Allied”). RP 31. Couyoumjian then joined Independent Financial Group, LLC, with whom she currently is associated. RP 30.

¹ “RP __” refers to the certified record filed by FINRA on December 3, 2020.

B. Expungement of Customer Dispute Information from CRD

The Exchange Act requires FINRA to collect and maintain registration information about member firms and their associated persons. 15 U.S.C. § 78o-3(i). FINRA maintains this information in CRD. Regulators use the information in CRD in connection with their licensing and regulatory activities, and firms use it when making hiring decisions. *See Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information*, 79 Fed. Reg. 43,809 (July 28, 2014). Additionally, FINRA releases some of the information in CRD to the investing public through BrokerCheck. *Id.* Among the information maintained in CRD and publicly released through BrokerCheck are customer complaints, arbitration claims, and awards that may result from those claims, collectively referred to as “customer dispute information.” *Id.*

The Commission has recognized that “[t]he completeness of information in the CRD, including accurate customer dispute information, is critical for the protection of investors and effective regulatory oversight,” and that when factual information is expunged from CRD, “both regulators and the investing public are disadvantaged[.]” *Id.* at 43,812-813. Accordingly, the Commission has encouraged FINRA “to assure that expungement in fact is treated as an extraordinary remedy that is permitted only where the information to be expunged has no meaningful investor protection or regulatory value.” *Id.* at 43,813.

An associated person who wishes to have customer dispute information removed from CRD must seek expungement pursuant to FINRA Rule 2080. *Id.* at *43,810. The rule identifies three narrow circumstances that justify expungement of customer dispute information from CRD in FINRA’s arbitration forum:

- the claim, allegation or information is factually impossible or clearly erroneous;

- the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- the claim, allegation or information is false.

FINRA Rule 2080(b)(1). FINRA's Code of Arbitration Procedure requires arbitrators to make an affirmative finding that one of the standards in FINRA Rule 2080 has been proven before recommending expungement. *See* FINRA Rules 12805, 13805. The standards imposed by FINRA Rule 2080 are intended to promote the common interest of public investors, broker-dealers and their associated persons, and regulators in "a CRD system that contains accurate and meaningful information" and maintains the "integrity of the arbitration process." *NASD Notice to Members 04-16*, 2004 NASD LEXIS 18 (Mar. 2004).

C. Couyoumjian's Customers' Complaints

Between November 2008 and March 2015, 12 customers filed complaints alleging Couyoumjian engaged in misconduct.² These customers alleged a variety of serious misconduct, including fraud, misrepresentation, unsuitability, breach of fiduciary duty, and selling away. *See* RP 56-58 (Prince), RP 60-62 (Christen), RP 70-78 (Sakoda), RP 82-84 (Lutz, McCown, Simpson), RP 86-87 (Wahlers), RP 90-91 (Gurvich), RP 95-96 (Cooper), RP 101 (Kirchners). Couyoumjian and her firm paid customers a total of more than \$3 million to settle these disputes.³ These complaints and their related settlements were recorded in CRD and currently are disclosed to the investing public through BrokerCheck.

² These customer complaints are reflected in eight "occurrences" in CRD.

³ Couyoumjian contributed a total of \$67,500 to these settlements. RP 84.

D. A FINRA Arbitrator Denies Couyoumjian’s Expungement Request

In December 2018, Couyoumjian filed a statement of claim with FINRA’s Dispute Resolution Services seeking to expunge from CRD the disclosures about these customer complaints. RP 119-20. Couyoumjian’s statement of claim named LPL and First Allied as respondents. RP 119-20. Neither LPL nor First Allied opposed Couyoumjian’s expungement request. RP 120. Two customers, however, opposed it. *See* Petition to Vacate Arbitration Award ¶ 18 *infra*. After considering the pleadings, testimony, and evidence presented at a telephonic hearing, a FINRA arbitrator denied Couyoumjian’s request for expungement. RP 121. In February 2020, the arbitrator issued a written final award in “full and final resolution of the issues.” RP 121.

E. Couyoumjian Petitions a State Court to Vacate the Arbitrator’s Award

Three months later, in May 2020, Couyoumjian, a California resident, filed a petition to vacate the arbitrator’s award in a Colorado state court. RP 29; *see* Petition to Vacate Arbitration Award (the “Petition to Vacate”), attached as Exhibit 1, hereto.⁴ Couyoumjian named LPL and First Allied as defendants. *See* District Court Civil Summons (the “Summons”), attached as Exhibit 3, hereto. Couyoumjian did not name FINRA as a party or give FINRA notice of the proceeding. Nor did she give notice to any of the complaining customers. *See id.*

⁴ The Commission may take official notice of the pleadings and documents in the state court proceeding. 17 C.F.R. § 201.323 (providing that “[o]fficial notice may be taken of any material fact which might be judicially noticed by a district court of the United States”); *see also* Keith Patrick Sequeira, Exchange Act Release No. 85231, 2019 SEC LEXIS 286, *2 n.2 (Mar. 1, 2019) (holding that Commission may take official notice of documents filed in state court proceedings to the extent they do not appear in the record). In her original Petition to Vacate, Couyoumjian pleaded that she sought to expunge the disclosures of seven customer complaints, not eight. The court later granted her unopposed motion for leave to amend her original pleading to correct the pleading to include disclosures of all eight customer complaints. *See* Order Granting Unopposed Motion for Leave to Amend Pleading, attached as Exhibit 2, hereto.

The crux of Couyoumjian’s petition was that the arbitrator’s award should be vacated because he reached the wrong result. Couyoumjian alleged that “the vast majority of the evidence presented by the parties . . . [was] in support of [Couyoumjian’s] request [for expungement],” and “there is no rational interpretation of the information presented leading to a finding that the allegations against [Couyoumjian] are true.” *See* Petition to Vacate ¶ 27, Exhibit 1.⁵

Several weeks later, in July 2020, Couyoumjian filed an unopposed motion to vacate the FINRA arbitration award. *See* Unopposed Motion for Entry of Order (“Motion for Vacatur”), attached as Exhibit 4, hereto. In her three-paragraph motion, Couyoumjian represented that both First Allied and LPL had “indicated that they take no position regarding [her] requested relief,” and did not intend to file an objection or responsive pleading because they are “nominal parties.” *Id.* at 2. She requested that the court grant her unopposed motion and issue an order vacating the arbitration award. *Id.*

Without hearing evidence or argument, the court granted Couyoumjian’s unopposed motion and vacated the FINRA arbitrator’s award. *See* Order Re Motion for Entry of Order (“Vacatur Order”), attached as Exhibit 5, hereto; Register of Actions Docket, attached as Exhibit 6, hereto. The Colorado court entered a proposed order submitted by Couyoumjian. *See* Vacatur Order, Exhibit 5.

⁵ Couyoumjian alleged in her Petition for Vacatur that the FINRA arbitrator’s award should be vacated under the Federal Arbitration Act (the “FAA”) because the arbitrator “exceeded his powers and manifestly disregard[ed] the law in denying” Couyoumjian’s expungement request. *See* Petition to Vacate, Exhibit 1. But Couyoumjian’s Petition for Vacatur was based entirely on the arbitrator’s allegedly incorrect factual findings. *See* Exhibit 1. “[The FAA] does not provide for vacatur of an arbitration award based on the merits of a party’s claim.” *Householder Group v. Caughran*, 354 Fed. Appx. 848, 851 (5th Cir. 2009). Likewise, manifest disregard of the law is not grounds for vacating an arbitration award. *Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 585 (2008).

F. Couyoumjian Files Her Second Expungement Request in FINRA’s Arbitration Forum

In October 2020, Couyoumjian filed her second statement of claim in FINRA’s arbitration forum seeking expungement of the same customer complaints. RP 8. Couyoumjian alleged that she was entitled to expungement pursuant to FINRA Rules 2080 and 13805 because the disclosures about the customer complaints “do not offer any public protection and have no regulatory value.” RP 8. Because Couyoumjian previously accessed the forum and litigated expungement of the same customer complaints on the merits, the Director determined that her claim was not eligible for arbitration and declined to accept it pursuant to FINRA Rule 13203(a). RP 15. Couyoumjian then filed an application for review with the Commission seeking review of the Director’s determination that her claim was not eligible for arbitration. RP 17-23.

II. ARGUMENT

A. The Commission Lacks Jurisdiction to Consider Couyoumjian’s Application for Review

The Commission should dismiss Couyoumjian’s application for review because it lacks jurisdiction to review the Director’s determination that her second expungement claim was not eligible for arbitration. Exchange Act Section 19(d)(2) authorizes the Commission to review FINRA’s actions only in specific circumstances, including, as relevant here, any action that “prohibits or limits any person in respect to access to services offered by” FINRA. 15 U.S.C. § 78s(d)(2).

FINRA did not deny Couyoumjian access to its arbitration services. FINRA accepted Couyoumjian’s first statement of claim seeking to expunge the eight customer complaints and allowed her to fully litigate it in FINRA’s arbitration forum. After a two-day hearing, the arbitrator denied Couyoumjian’s request for expungement on the merits. The arbitrator issued a

final written award denying Couyoumjian's expungement request in "full and final resolution" of the issues. RP 119-23.

FINRA's decision not to accept Couyoumjian's second arbitration claim seeking to relitigate expungement of the same customer complaints does not constitute a denial or limitation of access to FINRA's arbitration service. The Commission's decision in *Dustin Aiguier* compels this result. Exchange Act Release No. 88953, 2020 SEC LEXIS 1430 (May 26, 2020). In that matter, Aiguier accessed FINRA's arbitration forum, and a FINRA arbitrator denied Aiguier's request to expunge disclosures of two complaints. *Id.* at *2-3. Eleven months later, Aiguier filed a motion to reopen his arbitration case and access FINRA's arbitration forum again. *Id.* at *3-4. The Director denied him access, and Aiguier appealed FINRA's decision to the Commission. *Id.* at *4. The Commission dismissed the application for review for a lack of jurisdiction, finding that Aiguier did, in fact, access FINRA's arbitration service. *Id.* at *6. It continued: "Aiguier's claim that FINRA should have reopened the hearing is a merits question about whether FINRA properly implemented that service in a manner consistent with its rules, and arguments regarding the merits do not create jurisdiction under Section 19(d)(2)." *Id.* at *7.

So too here. That FINRA did not allow Couyoumjian repeat access to its arbitration service does not change the fact that she previously accessed that service. *See id.* Similar to *Aiguier*, Couyoumjian's claim that FINRA should have allowed her to relitigate her expungement request because of the Colorado order "is a merits question about whether FINRA properly implemented [its arbitration] service in a manner consistent with its rules, and arguments regarding the merits do not create jurisdiction under Section 19(d)(2)." *Id.*

Couyoumjian erroneously asserts, in a footnote, that the order in *Consolidated Arbitration Applications* establishes the Commission's jurisdiction over her appeal. Opening Br.

at 4; see *In the Matter of the Consolidated Arbitration Applications for Review of Action Taken by FINRA*, Exchange Act Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020). The consolidated cases are inapposite. Unlike Couyoumjian, the applicants in those cases did not access the arbitration forum and litigate an expungement claim on the merits to a final award. By contrast, Couyoumjian's first expungement claim was denied after a hearing on the merits in the arbitrator's final award. RP 119-23.

B. Couyoumjian's Remaining Arguments Do Not Overcome the Lack of Jurisdiction and Have No Merit

Couyoumjian's brief makes several arguments that FINRA should not have denied her access to the arbitration forum. None of her arguments, however, contests the fact that she had a hearing on the merits of her request to expunge from CRD the disclosures of the eight customer complaints. These arguments therefore do not overcome the lack of jurisdiction. See *Aiguier*, 2020 SEC LEXIS 1430, at *7; *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 SEC LEXIS 4189, at *14 (Oct. 22, 2019).

In any event, Couyoumjian's arguments are to no effect because the Director properly exercised his authority under FINRA Rule 13203 by denying Couyoumjian's second statement of claim. Relitigating expungement claims in FINRA's arbitration forum is not consistent with "the purposes of FINRA and the intent of the Code" of Arbitration Procedure. See FINRA Rule 13203(a). Permitting Couyoumjian to access FINRA's arbitration forum and relitigate expungement until she gets the outcome she wants would subvert the integrity of CRD and flout the most basic principles of investor protection. Indeed, investor protection would be profoundly undermined if a party who lost an expungement request on the merits could keep relitigating the request in FINRA's arbitration forum until she obtained the outcome she desired. The Director

has authority under 13203 to prevent such abuse and maintain the integrity of the expungement process.⁶

Contrary to Couyoumjian's assertion, the Director's proper exercise of his discretion under Rule 13203 is not a new rule. Opening Br. at 7. The Director is authorized to deny the arbitration forum when "the subject matter of the dispute is inappropriate." FINRA Rule 13203(a). Rather than providing a list of each subject matter that is inappropriate, the rule allows the Director to address new or novel arbitration claims that are inappropriate.⁷ The Commission explicitly considered the advantages of having the Director act as a gatekeeper to the forum and concluded that FINRA Rule 13203 "allow[s] [the forum] to focus on the cases that are appropriately in the forum," which "in turn, should promote the efficacy and efficiency of the arbitration." *Id.*

Couyoumjian's suggestion that she did not have notice of the basis for the Director's determination stretches the bounds of credulity. Opening Br. at 5-6, 8. Couyoumjian's brief

⁶ Couyoumjian asserts there are "countless cases" where FINRA permitted a claimant to access FINRA's arbitration forum a second time after the claimant obtained a vacatur of an arbitration award denying expungement relief. *See* Opening Br. at 9-10. Even if so, these cases do not establish that the Director acted improperly in this instance when denying Couyoumjian access for the reasons stated herein.

⁷ Couyoumjian contends that the Director's authority under FINRA Rule 13203 is limited to "emergency situations" or "only a very narrow range of unusual circumstances." Opening Br. at 7 n.8. At time of these statements, the Commission was approving the expansion of the Director's discretionary authority under FINRA Rules 13203 to give the Director additional flexibility to deny the forum in emergency situations. *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007). Couyoumjian also misreads the rule's text and conveniently ignores the disjunctive "or" in the plain language of the rule, which permits denial of the forum in circumstances like this one where the subject matter is inappropriate. *See* FINRA Rule 13203.

makes clear she knows exactly why the Director did not accept her second statement of claim for arbitration.⁸ *See* Opening Br. at 6, 8-9. Moreover, Dispute Resolution Services' letter to Couyoumjian explicitly invited her to contact the office if she needed further information. *See* RP 15. Couyoumjian, however, did not do so, causing her claims to ring hollow.

Finally, FINRA rules do not require that the Director himself communicate his decision to deny the forum. Opening Br. at 5. By referencing FINRA Rule 13203(a), it is axiomatic that the Director exercised his authority under the rules, regardless of whether he personally signed the letter communicating his decision or whether the letter explicitly referenced that "the Director," as opposed to "FINRA," made the decision. While FINRA's denial letter was appropriate, the Commission's analysis of this appeal need go no further than evaluating jurisdiction.

III. CONCLUSION

Couyoumjian was granted access to FINRA's arbitration service, and an arbitrator held a hearing on the merits of her expungement request. FINRA's refusal to allow Couyoumjian access to its arbitration forum to litigate the same expungement request a second time does not

⁸ Indeed, Couyoumjian was not impaired in her ability to challenge FINRA's determination before the Commission, and FINRA's letter permits the Commission to discharge its review function. *See Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068, at *14 (Mar. 31, 2017), *aff'd*, 2021 U.S. App. LEXIS 5724 (D.C. Cir. Feb. 26, 2021). But even if the letter was somehow insufficient, which it is not, the proper remedy would be a remand so FINRA could issue a new letter further explaining its decision to deny Couyoumjian's claim. This would be essentially pointless because, as evidenced by her brief, Couyoumjian knows why FINRA did not accept her second arbitration claim. *Cf. Tourus Records, Inc. v. DEA*, 259 F.3d 731, 739 (D.C. Cir. 2001) ("Indeed, a remand to correct the initial notice would serve no purpose, as the agency could and no doubt would simply retransmit its internal memoranda to petitioner.").

create jurisdiction for Commission review. Accordingly, the Commission should dismiss Couyoumjian's application for review for lack of jurisdiction.

Respectfully submitted,

/s/ Megan Rauch

Megan Rauch
FINRA
1735 K Street, NW
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March 8, 2021

Exhibit 1

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: May 7, 2020 10:02 AM FILING ID: FD6965908EEE2 CASE NUMBER: 2020CV30148
Petitioner: CYNTHIA COUYOUMJIAN v. Respondents: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC	COURT USE ONLY ▲ ▲
Attorneys for Petitioner: Name: Owen Harnett, #49899 Michael Bessette, #46645 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 432-6546 E-mail: owen.harnett@hlbslaw.com michael.bessette@hlbslaw.com	Case Number: Division Courtroom
PETITION TO VACATE ARBITRATION AWARD	

Petitioner, Cynthia Couyoumjian (“Ms. Couyoumjian”), by and through undersigned counsel, hereby respectfully petitions this Court to vacate the arbitration award issued in Financial Industry Regulatory Authority, Inc. (“FINRA”) Case Number 18-04362. As grounds:

PARTIES

1. Petitioner, Cynthia Couyoumjian (CRD #1456630), is a resident of Tustin, California, has been working in the securities industry since February of 1986, and is currently a financial advisor with Independent Financial Group in Tustin, California.

2. Respondent, LPL Financial LLC, (CRD #6413) (f/k/a Linsco/Private Ledger Corp.) (hereinafter, “LPL”), is a securities broker dealer, investment adviser firm, and FINRA member firm with its corporate headquarters in Boston, Massachusetts. LPL employed Ms. Couyoumjian as a financial advisor in Irvine, California between December of 2003 and July of 2004.

3. Respondent, First Allied Securities, Inc. (CRD # 7471) (hereinafter “First Allied”), is a securities broker-dealer, previously registered investment advisor firm, and FINRA member firm with its corporate headquarters in San Diego, California. Between July of 2004 and May of 2010, Ms. Couyoumjian was a financial consultant with First Allied in San Diego, California.

JURISDICTION/VENUE

4. This Court has subject matter jurisdiction as it has general subject matter jurisdiction and this is not an action that falls under the exclusive federal jurisdiction or any other recognized exception. This Court has personal jurisdiction through Respondent LPL’s and Respondent First Allied’s (hereinafter, collectively “Respondents”) voluntary consent to submit to the jurisdiction of any court of competent jurisdiction, Respondents have minimum contacts with Colorado, and Respondents commercial activities impact Colorado on a substantial, continuous, and systematic basis.

5. Venue is proper in this Court because Respondent LPL has branch offices located in Colorado, including several office locations in Broomfield, Colorado. Respondent First Allied has several branch offices throughout the Greater Denver Area. Petitioner’s counsel is located in Westminster, Colorado, in close proximity to Broomfield, Colorado, where a majority of the evidence is located.

BACKGROUND

6. FINRA is a private, not-for-profit, self-regulatory organization, which, among other things, regulates stockbrokers through its rules and regulations, including dispute resolution among Members and Associated Persons pursuant to FINRA's Code of Arbitration Procedure ("FINRA Rules").

7. FINRA's Rules require securities firms and registered representatives to disclose information regarding certain customer complaints made against registered representatives.

8. FINRA maintains disclosures, along with other registration information of securities industry personnel, in an electronic database, known as the Central Registration Depository ("CRD").

9. Securities firms have access to and are required to review associated persons' full CRD record when making hiring or supervisory decisions.

10. FINRA associated persons' registration information and certain CRD disclosures, including customer complaints, are available to the public through FINRA's "BrokerCheck" program. FINRA requires a readily accessible link to BrokerCheck on all financial advisors' webpages.

11. In order to ensure reliability of the customer dispute disclosure information contained within the CRD system and BrokerCheck website, FINRA established a right for members and associated persons to expunge these customer disputes. The standard for expungement has been met when any one or more of the following applies:

(A) the claim, allegation or information is factually impossible or clearly erroneous;

- (B) the registered person was not involved in the alleged investment- related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
- (C) the claim, allegation or information is false.

See FINRA Rule 2080(b)(1).

12. If expungement relief is granted, the claimant must then obtain an order from a court of competent jurisdiction confirming the arbitration award. See FINRA Rule 2080(a), (b).

FACTS

13. Ms. Couyoumjian filed a Statement of Claim against Respondents in FINRA arbitration (Case Number 18-04362) on December 26, 2018, and an Amended Statement of Claim on March 14, 2019¹, seeking expungement of seven customer dispute disclosures published on Ms. Couyoumjian's CRD and BrokerCheck records pursuant to FINRA Rule 2080:

- a. Occurrence No. 1430787 involving Respondent LPL;
- b. Occurrence No. 1435132 involving Respondent First Allied;
- c. Occurrence No. 1620763 involving Respondent First Allied;
- d. Occurrence No. 1666365 involving Respondent First Allied;
- e. Occurrence No. 1705398 involving Respondent First Allied;
- f. Occurrence No. 1715616 involving Respondent First Allied; and
- g. Occurrence No. 1749030 involving Respondent First Allied.

See Exhibit 1. The Statement of Claims also included a request for \$1 in compensatory damages.

¹ The Amended Statement of Claim withdrew the request to expunge Occurrence No. 1704529 and provided additional factual support for the remaining Occurrences, but otherwise requested the same relief.

14. On March 7, 2019, Respondent LPL filed its Statement of Answer and did not oppose Ms. Couyoumjian's request for expungement but objected to the request for \$1 in compensatory damages. See Exhibit 2.

15. On March 21, 2019, Respondent First Allied filed its Statement of Answer and did not oppose Ms. Couyoumjian's request for expungement but objected to the request for \$1 in compensatory damages. See Exhibit 3.

16. Prior to the hearing on the merits, each of the underlying customers (except one, who is deceased) were notified of the hearing and of their right to participate and testify at the expungement hearing if they chose.

17. Recorded expungement hearings were held on September 19, 2019 and February 3, 2020². Prior to the hearing, Ms. Couyoumjian submitted numerous exhibits in support of her request and withdrew the request for the \$1 damages against both Respondents.

18. Customer Prince participated in the underlying expungement proceedings and customer Kirchner wrote a letter opposing expungement.

19. Representatives for both Respondents were present at the hearing and did not oppose the requested expungement relief.

20. The Chairperson issued an award on February 10, 2020 (the "Award") denying Ms. Couyoumjian's request for expungement for each occurrence, without basis in fact or reason. See Exhibit 4.

21. Each of the above-referenced occurrences still remain on Ms. Couyoumjian's public records.

² A transcript of the hearing can be produced.

22. Ms. Couyoumjian now seeks to vacate the Award.

ARGUMENT

23. An arbitration award shall be vacated if the court finds applicable any of the exceptions listed in 9 U.S.C. § 10(a). Section 10(a)(4) requires vacatur if the court finds that “[a]n arbitrator exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” 9 U.S.C. § 10(a)(4).

24. Despite the deference afforded to arbitrator’s decisions, they are not beyond the reach of judicial review, and such decision must stem from interpretation and application of the agreement. *See, United Steelworkers of Am. v. Enter. Wheel and Car Corp.*, 363 U.S. 593, 597 (1991). An award fails to do so if it is “so unfounded in reason and fact, so unconnected with the wording and purpose of the agreement as to manifest an infidelity to the obligation of the arbitrator.” *Local No. 7 United Food & Commercial Workers Int'l Union v. King Soopers, Inc.*, 222 F.3d 1223, 1227 (10th Cir. 2000), quoting *Mistletoe Express Serv. V. Motor Expressmen’s Union*, 566 F.2d 692, 694 (10th Cir. 1977).

25. Whether judicially created or read into the language of 9 U.S.C.S. §10(a)(4), pursuant to *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008), the Tenth Circuit also recognizes manifest disregard of the law as a ground to vacate an arbitration award. *See, Walter v. Mark Travel Corp.*, No. 09-1019-EFM, 2013 U.S. Dist. LEXIS 133098 (D. Kan. Sep. 18, 2013), quoting *Sheldon v. Vermonty*, 269 F.3d 1202, 1206 (10th Cir. 2001). To satisfy this standard, “the record must show the arbitrators knew the law and explicitly disregarded it.” *Hollern v. Wachovia Securities, Inc.*, 458 F.3d 1169, 1176 (10th Cir. 2006), quoting *Dominion Video Satellite, Inc. v. Echostar Satellite L.L.C.*, 430 F.3d 1269, 1274 (10th Cir. 2005).

26. In the underlying proceeding, the Chairperson exceeded his powers and manifestly disregarded the law in denying Ms. Couyoumjian's request for expungement for each occurrence. The Chairperson knew the law and explicitly disregarded it in rendering the award. It is a well-established principle of law that the publication of false information about a person is defamatory and the injured party is entitled to relief. Where no other relief at law is appropriate, equitable relief—here, injunctive—is appropriate to prevent continued harm to the injured party when it does not prejudice another party. These principles are fundamental to the practice of law and are required knowledge of any licensed attorney. The Chairperson was experienced with injunctive relief litigation. It is, therefore, irrefutable that the Chairperson knew and understood the law as it relates to the publication of false information. Finally, a review of the record clearly indicates that each of the underlying customers' allegations lacked merit and that Ms. Couyoumjian did nothing wrong.

27. Because the vast majority of the evidence presented by the parties to the Chairperson were in support of Ms. Couyoumjian's request, there is no rational interpretation of the information presented leading to a finding of fact that the allegations against Ms. Couyoumjian are true. Furthermore, there was also no showing that Ms. Couyoumjian's request prejudiced any other party. Therefore, the law demands that Ms. Couyoumjian receive the relief she requested, and by denying her request, the Chairperson manifested a disregard for the law and exceeded his powers.

CONCLUSION

28. For the reasons set forth herein, Ms. Couyoumjian respectfully moves this Court to vacate the Award in FINRA case number 18-04362.

Date: May 7, 2020

CERTIFICATE OF SUBMISSION

The undersigned hereby certifies that a true and correct copy of the above Petition to Confirm Arbitration Award was served to the Registered Agent for LPL Financial LLC and First Allied Securities, Inc. via U.S. Certified Mail.



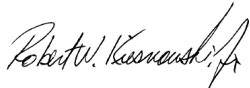
Michael Bessette
Attorney

Exhibit 2

DISTRICT COURT, BROOMFIELD COUNTY, COLORADO	
Court Address: 17 DESCOMBES DR., BROOMFIELD, CO, 80020	
Petitioner(s) CYNTHIA M COUYOUMJIAN v. Respondent(s) LPL FINANCIAL LLC et al.	DATE FILED: October 21, 2020 10:12 AM CASE NUMBER: 2020CV30148
△ COURT USE ONLY △	
Case Number: 2020CV30148 Division: B Courtroom:	
Order:Unopposed Motion to Amend Pleading	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 10/21/2020



ROBERT WALTER KIESNOWSKI JR
District Court Judge

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	<p style="text-align: center;">COURT USE ONLY</p> <p style="text-align: center;">▲ ▲</p>
Petitioner: CYNTHIA COUYOUMJIAN v. Respondent: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC	
Attorneys for Petitioner: Name: Owen Harnett, #49899 Michael Bessette, #46645 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 515-9069 E-mail: owen.harnett@hlbslaw.com michael.bessette@hlbslaw.com	Case Number: 2020CV30148 Division Courtroom
<u>UNOPPOSED</u> MOTION FOR LEAVE TO AMEND PLEADING	

Petitioner, Cynthia Couyoumjian (“Ms. Couyoumjian” or “Petitioner”), by and through undersigned counsel, hereby respectfully asks leave to amend, pursuant to C.R.C.P. 15, her Petition to Vacate Arbitration Award filed with the Court on May 7, 2020. In support of this motion, Petitioner states as follows:

Certificate of Conferral: Pursuant to C.R.C.P. 121 1-15(8), counsel for Petitioner conferred with counsel for Defendants LPL Financial, LLC and First Allied Securities, Inc on October 16, 2020. Defendants DO NOT OPPOSE the relief requested in this motion.

1. Ms. Couyoumjian filed her petition to vacate a FINRA arbitration award on May 7, 2020.
2. Although no responsive pleadings have been filed, more than 21 days have passed since the filing of the pleading.
3. Counsel for Ms. Couyoumjian recently discovered a factual mistake that was inadvertently included in the petition.
4. In numbered paragraph 13 of the pleading, the allegation and related footnote erroneously state that “The Amended Statement of Claim withdrew the request to expunge Occurrence No. 1704529 and provided additional factual support for the remaining Occurrences, but otherwise requested the same relief.”
5. Based on a review of the Amended Statement of Claim, undersigned counsel discovered that the Amended Statement of Claim did not withdraw the request to expunge Occurrence No. 1704529.
6. Ms. Couyoumjian seeks to amend the petition to correct the mistake and ensure the record remains accurate.
7. The First Amended Petition to Vacate Arbitration Award is attached hereto as Exhibit 1.
8. The FINRA award at issue in the petition to vacate includes Occurrence No. 1704529. Correcting the mistake of fact does not change the grounds of the petition nor the relief requested.
9. No trial or hearing has been set for this action and amending the petition will not prejudice any of the parties or frustrate the resolution of this action.

WHEREFORE, for the reasons set forth herein, Ms. Couyoumjian respectfully moves this Court to (1) Grant her Motion for Leave to File a First Amended Petition to Vacate Arbitration Award; and 2) accept Exhibit 1 hereto as the filed First Amended Petition to Vacate Arbitration Award.

Date: October 20, 2020

/s/ Michael Bessette
Michael Bessette
HLBS Law
9737 Wadsworth Parkway, G-100
Westminster, CO 80021
michael.bessette@hlbslaw.com
Attorney for Plaintiff

Attachment to Order

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of October, 2020 a true and correct copy of the foregoing was filed and served via U.S. Mail first class and mailed via email addressed to the following:

Mr. Jon D. Kaplon, Esq.
LPL Financial LLC
75 State Street
22nd Floor
Boston, MA 02109-1827
Phone: (617) 897-4324
E-mail: jon.kaplon@lpl.com
Defendant LPL Financial

Mr. Jeremy Woods, Esq.
Cetera Financial Group
200 North Pacific Coast Highway
Suite 1200
El Segundo, CA 90245
Phone: (310) 257-4859
E-mail: Jeremy.Wooden@cetera.com
Defendant First Allied Securities

/s/ Rebecca Mastel

Exhibit 3

DATE FILED: May 7, 2020 10:02 AM
FILING ID: FD6965908EEEE2
CASE NUMBER: 2020CV30148

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	
Petitioner: CYNTHIA COUYOUMJIAN	▲ COURT USE ONLY ▲
v.	
Respondents: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC	Case Number:
	Division: Courtroom:
DISTRICT COURT CIVIL SUMMONS	

TO THE ABOVE NAMED RESPONDENTS: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court an answer or other response to the attached Petition. If service of the Summons and Petition was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the Summons and Petition was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you. Your answer or counterclaim must be accompanied with the applicable filing fee.

If you fail to file your answer or other response to the Petition in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Petition without further notice.

Dated: April 7, 2020

Clerk of Court/Clerk

/s/ Michael Bessette
Michael Bessette
Attorney for Petitioner

This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Petition must be served with this Summons. This form should not be used where service by publication is desired.

WARNING: A valid summons may be issued by a lawyer and it need not contain a court case number, the signature of a court officer, or a court seal. The plaintiff has 14 days from the date this summons was served on you to file the case with the court. You are responsible for contacting the court to find out whether the case has been filed and obtain the case number. If the plaintiff files the case within this time, then you must respond as explained in this summons. If the plaintiff files more than 14 days after the date the summons was served on you, the case may be dismissed upon motion and you may be entitled to seek attorney's fees from the plaintiff.

TO THE CLERK: If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

Exhibit 4

DATE FILED: July 6, 2020 4:17 PM
FILING ID: F8C8FA4B619A7
CASE NUMBER: 2020CV30148

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020 (720) 887-2100	
Petitioner: CYNTHIA COUYOUMJIAN v. Respondent: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC.	▲ COURT USE ONLY ▲
Attorney for Petitioner: Michael Bessette #46645 HLBS Law, LLC 9737 Wadsworth Parkway, Suite G-100 Westminster, CO 80021 Tel: (720) 432-6546 Email: michael.bessette@hlbslaw.com	Case Number: 2020CV30148 Division: B
UNOPPOSED MOTION FOR ENTRY OF ORDER	

PETITIONER, Cynthia Couyoumjian (“Petitioner”), hereby respectfully moves this Court to enter an order on her Petition to Vacate Arbitration Award (the “Petition”), and as grounds, states as follows:

CERTIFICATE OF CONFERRAL

Pursuant to C.R.C.P. 121 § 1-15(8), counsel for Petitioner conferred in good faith with counsel for Respondent First Allies Securities, Inc. (“Respondent FASI”) and with counsel for

Respondent LPL Financial LLC (“Respondent LPL”) regarding the relief requested herein, and hereby states as follows:

UNOPPOSED MOTION

1. On May 7, 2020, Petitioner initiated this action by filing her Petition to Vacate Arbitration Award (“Petition”) against Respondent FASI and Respondent LPL which seeks to vacate the arbitration award issued in the underlying FINRA arbitration captioned Cynthia Mary Couyoumjian v. LPL Financial LLC and First Allied Securities, Inc., Case No. 18-04362.

2. Petitioner’s counsel conferred with counsel for Respondent FASI and counsel for Respondent LPL, and both Respondents have indicated that they take no position regarding Petitioner’s requested relief as outlined in the Petition.

3. Counsel for both Respondents informed Petitioner’s counsel that Respondents do not intend to file an objection or other responsive pleading because Respondents are nominal parties.

WHEREFORE, it is respectfully requested that the Court grant this Unopposed Motion for Entry of Order, and issue an order vacating the arbitration award issued in FINRA Case No. 18-04362 for the reasons set forth in Petitioner’s Petition.

DATED: 7/6/2020

/s/Michael Bessette
Michael Bessette #46645
HLBS Law, LLC
9737 Wadsworth Parkway, Suite G-100
Westminster, CO 80021
Phone Number: (720) 432-6546
Email: michael.bessette@hlbslaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of July 2020 a true and correct copy of the foregoing **UNOPPOSED MOTION FOR ENTRY OF ORDER** was filed and served via Colorado Courts E-filing and mailed via email addressed to the following:

Jeremy Wooden
Cetera Financial Group
200 North Pacific Coast Hwy, Suite 1200
El Segundo, CA 90245
Tel: (310) 257-4859
Email: jeremy.wooden@cetera.com

Jon Kaplon
LPL Financial LLC
75 State Street
Boston, Massachusetts 02109
Tel: (617) 897-4324
Email: jon.kaplon@lpl.com

/s/Zach T. Adams

Exhibit 5

DISTRICT COURT, BROOMFIELD COUNTY, COLORADO		DATE FILED: July 15, 2020 2:50 PM CASE NUMBER: 2020CV30148
Court Address: 17 DESCOMBES DR., BROOMFIELD, CO, 80020		
Petitioner(s) CYNTHIA M COUYOUMJIAN v. Respondent(s) LPL FINANCIAL LLC et al.		△ COURT USE ONLY △ Case Number: 2020CV30148 Division: B Courtroom:
Order:2020CV30148 2020-07-06 (Proposed) Order Re Motion for Entry of Order (C Couyoumjian)		

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 7/15/2020

ROBERT WALTER KIESNOWSKI JR
District Court Judge

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020 (720) 887-2100	
Petitioner: CYNTHIA COUYOUMJIAN v. Respondent: LPL FINANCIAL LLC and FIRST ALLIED SECURITIES, INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Attorney for Petitioner: Michael Bessette #46645 HLBS Law, LLC 9737 Wadsworth Parkway, Suite G-100 Westminster, CO 80021 Tel: (720) 432-6546 Email: michael.bessette@hlbslaw.com	Case Number: 2020CV30148 Division: B
PROPOSED ORDER RE: UNOPPOSED MOTION FOR ENTRY OF ORDER	

Having reviewed and considered the Unopposed Motion for Entry of Order (the “Motion”) filed by Petitioner Cynthia Couyoumjian, the Court ORDERS that the Motion is GRANTED and that the Court hereby ENTERS this Order, which provides that:

1. The Petitioner’s request to Vacate Arbitration Award in FINRA Case No. 18-04362 is hereby granted.

Dated: _____

 JUDGE

Exhibit 6

Register of Actions

	Filed by Plaintiff/Petitioner
	Filed by Defendant/Respondent
	Filed by Court

Case Number: 2020CV030148

Division: B

Case Type: Other

Judicial Officer: Robert Walter Kiesnowski Jr.

Case Caption: [Couyoumjian, Cynthia M v. Lpl Financial LLC et al](#)

Court Location: Broomfield County

Filing ID	Date Filed	Authorizer	Organization	Filing Party	Document	Document Title	Document Security
N/A (Details)	10/21/2020 10:12 AM	Robert Walter Kiesnowski Jr.	Broomfield County	N/A	Order (Related Document)	Order:Unopposed Motion to Amend Pleading	Public
E69AB8C7EEB0F	10/20/2020 12:07 PM	Michael J Bessette	HLBS Law	Cynthia M Couyoumjian	Motion (Related Document)	Unopposed Motion to Amend Pleading	Public
					Exhibit - Attach to Pleading/Doc (Related Document)	Exhibit 1 - First Amended Petition to Vacate Arbitration Award	Protected
					Proposed Order	Proposed Order re Motion to Amend	Public
N/A	07/22/2020 12:00 AM	N/A	N/A	N/A	Case Closed	N/A	
N/A (Details)	07/15/2020 2:50 PM	Robert Walter Kiesnowski Jr.	Broomfield County	N/A	Order (Related Document)	Order:2020CV30148 2020-07-06 (Proposed) Order Re Motion for Entry of Order (C Couyoumjian)	Public
F8C8FA4B619A7	07/06/2020 4:17 PM	Michael J Bessette	HLBS Law	Cynthia M Couyoumjian	Motion (Related Document)	2020CV30148 2020-07-06 Motion for Entry of Order (C Couyoumjian)	Public
					Proposed Order (Related Document)	2020CV30148 2020-07-06 (Proposed) Order Re Motion for Entry of Order (C Couyoumjian)	Public
E89BB8BC21C5C	05/14/2020 1:42 PM	Michael J Bessette	HLBS Law	Cynthia M Couyoumjian	Return of Service	Return of Service (LPL Financial)	Public
FF8D2FA23CA39	05/13/2020 12:58 PM	Michael J Bessette	HLBS Law	Cynthia M Couyoumjian	Return of Service	Return of Service	Public

Filing ID	Date Filed	Authorizer	Organization	Filing Party	Document	Document Title	Document Security
FD6965908EEE2	05/07/2020 10:02 AM	Michael J Besette	HLBS Law	Cynthia M Couyoumjian	Petition <i>(Related Document)</i>	Petition to Vacate Arbitration Award (C Couyoumjian)	Public
					Exhibit - Attach to Pleading/Doc <i>(Related Document)</i>	Exhibit 1 Amended Statement of Claim (C Couyoumjian)	Protected
					Exhibit - Attach to Pleading/Doc <i>(Related Document)</i>	Exhibit 2 LPL Statement of Answer (C Couyoumjian)	Protected
					Exhibit - Attach to Pleading/Doc <i>(Related Document)</i>	Exhibit 3 FASI Statement Of Answer (C Couyoumjian)	Protected
					Exhibit - Attach to Pleading/Doc <i>(Related Document)</i>	Exhibit 4 Executed Award (C Couyoumjian)	Protected
					Proposed Order <i>(Related Document)</i>	Order to Vacate Arbitration Award (C Couyoumjian)	Public
					Summons <i>(Related Document)</i>	District Court Civil Summons (C Couyoumjian)	Public
Civil Case Cover Sheet <i>(Related Document)</i>	District Court Civil Cover Sheet (C Couyoumjian)	Public					

Party Information

Party Name	Party Type	Party Status	Attorney Name
Cynthia M Couyoumjian	Petitioner	Active	MICHAEL J BESSETTE (HLBS Law) OWEN HARNETT (HLBS Law)

Party Name ▲	Party Type ◆	Party Status ▲	Attorney Name ◆
First Allied Securities Inc	Respondent	Active	N/A
Lpl Financial Llc	Respondent	Active	N/A

CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 8th day of March 2021, I caused a copy of the foregoing FINRA's Brief in Opposition to Application for Review, Administrative Proceeding File No. 3-20154, to be served by via email on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090
apfilings@sec.gov

Michael Bessette
HLBS Law
9737 Wadsworth Pkwy, Suite G-100
Westminster, Co 80021
michael.bessette@hlbslaw.com

Due to office closures related to COVID-19, the parties were served via electronic mail.

/s/Megan Rauch
Megan Rauch
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
megan.rauch@finra.org