Celia L. Passaro
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February 23, 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 Ryan William Mummert
Administrative Proceeding No. 3-20210

Dear Ms. Countryman:

Enclosed please find a copy of FINRA's Motion to Adduce Additional Evidence in the above-referenced case.

Sincerely,

/s/Celia L. Passaro

Celia L. Passaro

Enclosures

cc: Michael Bessette, Esq. (by email)

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application for Review of

Ryan William Mummert

File No. 3-20210

FINRA'S MOTION TO ADDUCE ADDITIONAL EVIDENCE

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Vice President and
Director – Appellate Group

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1735 K Street, NW
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(202) 728-8985

February 23, 2021

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
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In the Matter of the Application for Review of

Ryan William Mummert

File No. 3-20210

FINRA'S MOTION TO ADDUCE ADDITIONAL EVIDENCE

FINRA moves the Commission for leave to adduce additional evidence pursuant to SEC Rule of Practice 452. In this appeal, applicant Ryan William Mummert seeks Commission review of FINRA Dispute Resolution Services' ("DRS") denial of its arbitration forum to expunge a more than 22-year-old prior adverse arbitration award in a customer case. FINRA now requests to introduce the Declaration of Laura McNamire (attached as Exhibit 1) and the Declaration of David Carey (attached as Exhibit 2) (together the "Declarations"). The Declarations further explain the basis of DRS's decision to deny forum in this case. The Commission should permit the introduction of this evidence because it is material and there were reasonable grounds for failing to adduce the evidence previously.

I. BACKGROUND

From July 1996 to August 2000, Mummert was registered with Prudential Securities Incorporated. ("Prudential"), now known as Prudential Equity Group, LLC. (R. at 21, 53.)[1] In 1998, the customers filed an arbitration against Prudential and Mummert in the New York Stock

[1] "R. at __" refers to the certified record in this matter filed on February 22, 2021.

Exchange's ("NYSE") arbitration forum alleging mismanagement, failure to follow instructions, and the unauthorized sale of a security. (R. at 33, 62-63). On June 4, 1998, an arbitrator issued an award, ordering respondents to deliver to the customers a security along with a cash payment. (R. at 33.)

More than 22 years later, Mummert filed a statement of claim with DRS seeking expungement of the 1998 adverse award. (R. at 1-7.) Because of the age of the customer arbitration and statements in Mummert's Statement of Claim, DRS initially allowed the expungement arbitration to proceed because it believed the request was to expunge a customer complaint that had been settled. On or about December 10, 2020, while an arbitration was underway, DRS discovered that the matter Mummert sought to expunge was in fact an adverse arbitration award. On December 24, 2020, DRS notified Mummert that his request for expungement was not eligible for arbitration because it involved a prior adverse arbitration award. (R. at 29.) DRS, accordingly, denied the arbitration forum pursuant to Industry Code Rule 13203(a).[2] (*Id.*)

On January 27, 2021, Mummert filed an application for review with the Commission, requesting that the Commission order FINRA to permit him to arbitrate his request to expunge the 1998 arbitration award. (R. at 37-39.) In his Application for Review, Mummert claims that the matter he seeks to expunge is not a prior arbitration award, but rather a customer claim that was settled. (R. at 37.)

[2] Industry Code Rule 13203(a) provides, in relevant part, that the Director of DRS "may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate" for arbitration.

II. ARGUMENT

Under Rule of Practice 452, the Commission may permit the introduction of new evidence if the moving party shows that (a) "such evidence is material" and (b) "there was reasonable grounds for failure to adduce such evidence previously." 17 CFR § 201.452. The Declarations meet both criteria of Rule 452 and therefore should be admitted into evidence.

The Declarations are material because they explain two key issues on appeal: (1) whether the matter Mummert seeks to expunge is a prior adverse arbitration award or a case that was settled; and (2) the circumstances of how DRS learned that Mummert was seeking to expunge a prior adverse arbitration award. The McNamire Declaration addresses FINRA's discovery that Mummert sought to expunge a prior adverse arbitration award. The Carey Declaration addresses the format of NYSE arbitration awards like the award issued in the customer arbitration here. By admitting the Declarations into evidence, the parties will be able to address these key issues more fully.

FINRA seeks to introduce the Declarations now because the Declarations did not exist at the time that FINRA took the action which is the subject of the appeal.[3] *See Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 SEC LEXIS 2024, at *38 (June 29, 2012) (granting the Division's motion to adduce two declarations where the evidence was material and there were reasonable grounds for failure to adduce the declarations previously because they were not available). Because this appeal arises in a matter for which there was no evidentiary hearing at which the declarants' information could have been introduced into evidence, FINRA

[3] Commission Rule of Practice 420(e) provides that FINRA "shall certify and file . . . [with the Commission] one . . . copy of the record upon which the action complained of was taken." 17 C.F.R. § 201.420. The Declarations did not exist at the time the action complained of was taken. Accordingly, FINRA files this motion to adduce.

requests that the Commission allow it to present this evidence through declarations. *See Dennis A Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *11 n.15 (Dec. 11, 2006) (granting a motion to adduce, among other documents, declarations in a case in which the evidence was not previously adduced because there had been no hearing held). Moreover, FINRA has moved to adduce the declarations promptly, one day after it filed the certified record in this appeal. *See Kevin M. Murphy*, Exchange Act Release No. 79016, 2016 SEC LEXIS 3772, at *6 n.9 (Sept. 30, 2016) (granting a motion to adduce a declaration where FINRA acted quickly to supplement the record once the issue addressed by the declaration was raised).

In sum, FINRA's proposed evidence—the Declarations—are material and FINRA has reasonable grounds for not previously introducing this evidence. Accordingly, the Commission should grant FINRA's motion.

Respectfully submitted,

/s/*Celia Passaro*

_____

Celia Passaro
Assistant General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8985

February 23, 2021

Exhibit 1

DECLARATION OF LAURA MCNAMIRE

I, Laura McNamire, declare as follows:

1. I am employed by the Financial Industry Regulatory Authority ("FINRA") as Regional Director in Dispute Resolution Services ("DRS"). I have worked at FINRA for 18 years and have personal knowledge of the matters contained in this Declaration. I submit this Declaration in support of FINRA's opposition to the application for review in the Matter of the Application for Review of Ryan William Mummert.

2. Code of Arbitration Procedure for Industry Disputes ("Industry Code") Rule 13203(a) provides that the Director of DRS may decline to permit the use of FINRA's arbitration forum where the Director determines that, given the purposes of FINRA and the intent of the Industry Code, the subject matter of the dispute is inappropriate. It has been DRS's policy to decline to permit the use of FINRA's arbitration forum where the claimant seeks expungement of a prior adverse arbitration award on a customer claim.

3. DRS attempts to identify claims seeking to expunge prior adverse arbitration awards when the statement of claim is initially filed. DRS has denied the forum, however, when DRS learns later in the arbitration proceedings that the claimant seeks to expunge a prior adverse award. In addition to the Mummert arbitration, DRS denied the forum in 12 other cases from 2020 to present because an expungement request concerned a prior adverse award.

4. On April 21, 2020, Mummert submitted a Statement of Claim with FINRA DRS against Prudential Securities, Inc. ("Prudential"), seeking expungement of a matter reported on Mummert's record in FINRA's Central Registration Depository ("CRD®") (the "expungement

arbitration"). In the Statement of Claim, Mummert represented that the matter for which he sought expungement was a settlement of a customer claim.

5. On June 10, 2020, Prudential submitted its Answer to the Statement of Claim. A list of potential arbitrators was sent to the parties and an arbitrator was appointed. An expungement hearing was held on December 10, 2020.

6. On December 10, 2020, during the expungement hearing and prior to the issuance of an award in the expungement arbitration, DRS learned that the matter for which Mummert sought expungement was not a settlement, but rather, a customer arbitration in which there had been an adverse award. The fact that the matter involved a customer award was not readily apparent to DRS because the customer claim was arbitrated in the New York Stock Exchange arbitration forum in 1998, more than 22 years ago.

7. On December 24, 2020, DRS notified Mummert that the Director had determined to deny the forum pursuant to Industry Code Rule 13203(a) because Mummert's claim was "not eligible for arbitration as it arises from a prior adverse award." DRS closed the case and refunded Mummert's filing fees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2021, in Los Angeles, California.

Laura McNamire

Exhibit 2

DECLARATION OF DAVID CAREY

I, David Carey, declare as follows:

1. Until 2020, I was employed by the Financial Industry Regulatory Authority ("FINRA") as an Associate Director of Dispute Resolution ("DRS"). I retired from FINRA in 2020 after working for DRS for 12 and one-half years. I have personal knowledge of the matters contained in this Declaration. I submit this Declaration in support of FINRA's opposition to the application for review in the Matter of the Application for Review of Ryan William Mummer.

2. Prior to joining FINRA DRS, I worked for the New York Stock Exchange's ("NYSE") arbitration forum as a Chief Arbitration Counsel. I worked with the NYSE for 19 and one-half years and I am familiar with the format of NYSE arbitration awards.

3. When the parties in a NYSE arbitration settled a case or agreed to the entry of a stipulated award, the arbitration award would explicitly state that the dispute was resolved by settlement or stipulation.

4. The language "in full and final settlement of all claims" was embedded in the standard award form used by the NYSE in 1998. As shown by Exhibit A to this declaration, which consists of four publicly available arbitration awards from 1998, NYSE arbitrators regularly used this language when deciding cases, whether after an evidentiary hearing or on the papers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2021, in New York, New York.

David Carey

Exhibit A

New York Stock Exchange
In the Matter of Arbitration Between

NYSE

Case: William E. Ehling v. Morgan Stanley & Co. Inc.

Attorneys:
For Claimant(s):
David B. Wechsler Esq. - New York, NY

For Respondent(s):
Seamus Tuohey Esq. - New York, NY

Date Filed: 01/08/1997 First Scheduled: 07/30/1997 Decided: 3-4-1998

Case Summary: Claimant alleges that the firm breached an employment agreement and was unjustly enriched by underpaying him bonus compensation for 1994 and by failing to pay him a bonus in 1995.

Product: Market:

Claim Data		Award Data	
Claim:	$475,000.00	Award:	$180,000.00
Punitive:	Uns	Punitive:	$0.00
Atty Fees:	$60,000.00	Atty Fees:	$0.00
Deposit:	$750.00	Costs:	$0.00

Forum Fees: $14,700.00

Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that: Morgan Stanley & Co., Inc. shall pay to William E. Ehling the sum of $180,000.00 as an award on the Statement of Claim. If the award is not paid in full within 30 days of the date of receipt of the award, interest shall be payable on the award at the rate of 9% from the date of the award until paid. No attorney's fees or punitive damages are awarded. Forum fees in the amount of $14,700.00, payable to the New York Stock Exchange, are assessed against Morgan Stanley & Co., Inc.

Remarks: In-Person pre-hearings on Oct 16, 1997 and December 15, 1997 with Mr. Brainin. Telephone pre-hearings with Mr. Brainin on 11-18-1997 and 12-9-1997. Pre-hearing determination (on papers) by Mr. Brainin on November 11, 1997. Panel deliberation on Feb. 24, 1998.

Arbitrators: (D = Dissents)

David N. Brainin
Madelon Rosenfeld
Matthew J. Tolan

Signatures:

City: New York State: NY Date: 3-4-1998 Docket #: 1997-006273

Sessions: 18 Hearing Dates:

	01/22/1998(2)	01/29/1998(3)	02/20/1998(2)
01/14/1998(1)	01/26/1998(2)	02/13/1998(2)	
01/20/1998(2)	01/27/1998(2)	02/17/1998(2)	

New York Stock Exchange
In the Matter of Arbitration Between

NYSE

Case: Edward Gillen and Margaret Gillen v Smith Barney, Inc. and Dean Witter Reynolds, Inc.

Attorneys:
For Claimant(s):
John E. Lawlor Esq. - Mineola, NY

For Respondent(s):
Alejandro Schwed Esq. - New York, NY
James D. Yellen Esq. - New York, NY

Date Filed: 08/15/1997 First Scheduled: 03/19/1998 Decided: 03/19/1998

Case Summary: Claimants allege that Respondent Smith Barney failed to confirm transfer of his accounts that Respondent Dean Witter failed to transfer.

Product: Market:

Claim Data	Award Data
Claim: $81,200.00	Award: $20,000.00
Punitive: $0.00	Punitive: $0.00
Atty Fees: $0.00	Atty Fees: $0.00
Deposit: $500.00	Costs: $0.00

Forum Fees: $1,000.00

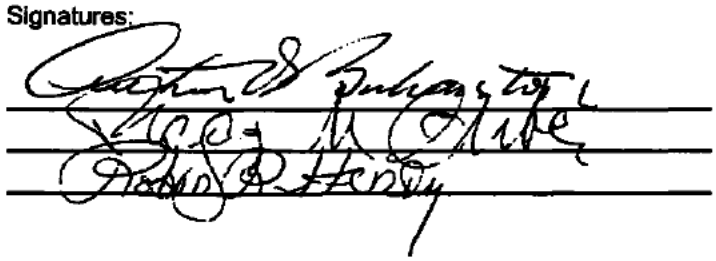
Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that: Respondent Smith Barney shall pay to Claimants $10,000 in damages. Respondent Dean Witter shall pay to Claimants $10,000 in damages. Forum fees are assessed against Smith Barney, including reimbursement to Claimants of their $500 hearing deposit. Each party shall pay its own fees and expenses.

Remarks:

Arbitrators: (D = Dissents)

Arthur O. Birkenstock
Roger M. Gerber
Robin R. Henry

Signatures:



City: New York State: NY Date: 03/19/1998 Docket #: 1997-006692

Sessions: 2 Hearing Dates:

03/19/1998(2)

New York Stock Exchange
In the Matter of Arbitration Between

NYSE

Case: Richard S. Thompson & Nancy J. Thompson v. Smith Barney, Inc. (formerly Shearson Lehman Brothers & Paine Webber, Inc.

Attorneys:
For Claimant(s):
Richard S Thompson - Chatham, MA
Richard S. Thompson - Hobe Sound, FL

For Respondent(s):
Linda R. Alpert Esq. - New York, NY
Amy Bard Esq. - Weehawken, NJ

Date Filed: 12/01/1997 First Scheduled: 07/07/1998 Decided: 7/7/1998

Case Summary: Customer claimants allege failure to transfer shares of Hasbro correctly resulting in shares mising from account. PaineWebber, Inc. filed cross-claim against Smith Barney, Inc. in its answer dated January 23, 1998 alleging entitlement to contribution. Respondent Smith Barney filed cross claim dated February 10, 1998 against PaineWebber for contribution for any recovery obtained by claimants.

Product: EQU Market:

Claim Data		Award Data	
Claim: $50,500.00	CC/3rd Pty: $50,500.00	Award: $0.00	CC 3rd Pty: $0.00
Punitive: $0.00	Punitive: $0.00	Punitive: $0.00	Punitive: $0.00
Atty Fees: $0.00	Atty Fees: Uns	Atty Fees: $0.00	Atty Fees: $0.00
Deposit: $500.00	Deposit: $1,200.00	Costs: $0.00	Costs: $0.00
		Forum Fees:	$1,000.00

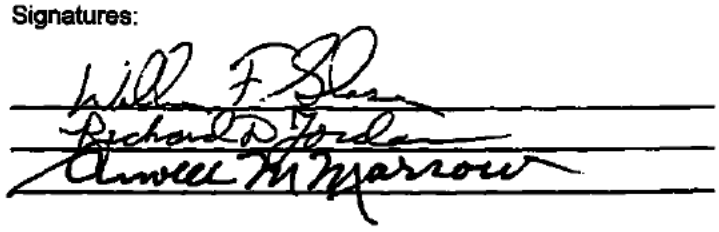
Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that:
The claim of the claimant be and hereby is dismissed in all respects; that the cross-claim PaineWebber be and hereby is dismissed in all respects; that the cross-claim of Smith Barne be and hereby is dismissed in all respects; that the costs of this proceeding, $1,000., are assessed against claimant.

Remarks:

Arbitrators: (D = Dissents)

William F. Glaser
Richard D. Jordan
Arnold M. Marrow

Signatures:



City: Providence State: R.I. Date: 7/7/1998 Docket #: 1997-006851

Sessions: (2) Hearing Dates: 7/7/1998

New York Stock Exchange
In the Matter of Arbitration Between

NYSE

Case: Betty L. Cornelius, individually and as the Personal Representative of the Estate of Florence M. Karl vs. Everen Securities, Inc.

Attorneys:
For Claimant(s):
Philip J. Snyderburn Esq. - Winter Park, FL

For Respondent(s):
Bruce Lewitas Esq. - Chicago, IL

Date Filed: 03/26/1998 First Scheduled: 12/03/1998 Decided: 12/04/1998

Case Summary: Representative of Estate/Customer vs. Member Firm alleging excessive trading, fraudulent inducement, breach of fiduciary duty, misrepresentations and omissions, negligence and breach of contract. Claimant seeks recovery of losses, interest, costs and punitive damages.

Product: EQU Market: Other

Claim Data		Award Data	
Claim: Uns		Award: $15,800.00	
Punitive: Uns		Punitive: $0.00	
Atty Fees: $0.00		Atty Fees: $0.00	
Deposit: $400.00		Costs: $0.00	
	Forum Fees: $1,600.00		

Decision: The undersigned arbitrators have decided and determined in full and final settlement of all claims between the parties that: Claimant shall recover the sum of $15,800.00 from Respondent. NYSE forum fees of $1,600.00 are to be split equally between the parties.

Remarks:

The undersigned arbitrators hereby affirm that they have executed this instrument which is their award:

Arbitrators: (D = Dissents) Signatures:

Ramona V. Larson

William B. Ross

Thomas H. Sutter

City: Milwaukee State: WI Date: 12/04/1998 Docket #: 1998-007016

Sessions: 4 Hearing Dates:

12/03/1998(2)
12/04/1998(2)

CERTIFICATE OF SERVICE

I, Celia Passaro, certify that on this 23rd day of February 2021, I caused FINRA's Motion to Adduce Additional Evidence in the matter of the Application for Review of Ryan William Mummert, Administrative Proceeding No. 3-20210, to be served by electronic service on:

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

I also caused a copy to be served by electronic service on:

Michael Bessette, Esq.
HLBS Law, LLC
9737 Wadsworth Pkwy, Ste. G-100
Westminster, CO 80021
legal.bessette@hlbslaw.com

Respectfully submitted,

/s/ *Celia L. Passaro*
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