

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

In the Matter of the Application of

Jason Harry Kurchner

File No. 3-20467

**FINRA'S UNOPPOSED MOTION  
TO CONSOLIDATE AND POSTPONE BRIEFING**

**I. INTRODUCTION**

On August 20, 2021, Jason Harry Kurchner filed with the Commission an application for review. Kurchner appeals a determination by the Director of FINRA's Office of Dispute Resolution that Kurchner's request to expunge a customer arbitration award from FINRA's Central Registration Depository ("CRD<sup>®</sup>") is not eligible for arbitration. Kurchner's appeal presents the same fact pattern, and raises the same legal issues, as numerous appeals previously consolidated by the Commission that have been fully briefed. Consequently, FINRA requests that the Commission consolidate Kurchner's appeal with those appeals and postpone briefing in this appeal pending resolution of the consolidated appeals. Counsel for Kurchner does not oppose FINRA's motion.

## II. BACKGROUND

### A. Kurchner

Kurchner entered the securities industry in 1984 and was last registered with a FINRA member in 2014. RP 17, 20.<sup>1</sup> From 1998 to 2009, Kurchner was registered with Prime Capital Services, Inc., a previously registered broker dealer that is no longer a FINRA member. RP 3, 18.

### B. Procedural Background

In March 1999, Kurchner's customer filed an arbitration claim with NASD Regulation against Kurchner and another individual. RP 29. The customer alleged that Kurchner, while he was associated Prime Capital Services, and the other individual ("the respondents") "mismanaged [the customer's] mutual fund account by failing to follow through on respondents' representations." RP 1, 29-30. The customer alleged that the respondents recommended the customer "transfer monies from all of the [customer's] mutual fund accounts to a new account that respondents recommended." RP 1. After the customer agreed to transfer the funds, "the respondents transferred monies to a cash account and forgot about the cash account for three to

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<sup>1</sup> "RP at \_\_\_" refers to the page number in the certified record filed on September 2, 2021.

four weeks.” *Id.* The customer also alleged that Kurchner and the other individual “were negligent in the timely transferal of [the customer’s] funds.” *Id.*

On January 7, 2000, the arbitrator issued an award (the “Customer Award”) finding the customer was entitled to recover damages of \$11,221, jointly and severally from Kurchner and the other individual, plus a filing fee of \$75.<sup>2</sup> RP 1, 30-31.

On June 25, 2021, Kurchner filed with FINRA’s Office of Dispute Resolution a statement of claim. RP 3-6. Kurchner sought expungement of the Customer Award from CRD and BrokerCheck. *See id.* On August 2, 2021, FINRA’s Office of Dispute Resolution notified Kurchner that this matter “is ineligible for expungement from CRD because an adverse award against” Kurchner “was rendered,” and he “was held liable for damages to the customer.” RP 7. Pursuant to FINRA arbitration rules, the Director denied Kurchner the use of FINRA’s arbitration forum because the subject matter of the dispute Kurchner sought to expunge involved a liability finding by a prior arbitrator. *Id.*

On August 20, 2021, Kurchner filed an application for review with the Commission. RP 9-11.

### C. Consolidated Arbitration Appeals

The Commission previously consolidated numerous applications for review (the “Consolidated Arbitration Appeals”) presenting the same fact pattern and legal issues as is presented by Kurchner in this appeal. *See Consolidated Arbitration Applications*, Exchange Act

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<sup>2</sup> The NASD case number for this matter is “99-01356.” RP 1. This case is referenced in CRD as “Occurrence# 694221.” RP 29.

Release No. 89495, 2020 SEC LEXIS 3312 (Aug. 6, 2020).<sup>3</sup> The parties in the Consolidated Arbitration Appeals have fully briefed the merits of those appeals.

### **III. ARGUMENT**

Kurchner's appeal presents the same fact pattern, and raises the same legal issues, as the Consolidated Arbitration Appeals. The parties have already fully briefed the issues in the Consolidated Arbitration Appeals, and Kurchner's counsel has indicated that he does not oppose consolidation of his appeal with the Consolidated Arbitration Appeals and postponing briefing in this matter. Accordingly, for the reasons set forth herein, the Commission should consolidate this matter with the Consolidated Arbitration Appeals and postpone briefing.

Commission Rule of Practice 201(a) provides that the Commission may consolidate "proceedings involving a common question of law or fact . . . for hearing of any or all matters at issue in such proceedings." 17 C.F.R. § 201.201(a). This appeal shares a common fact pattern and questions of law as presented in the Consolidated Arbitration Appeals. Like the applicants in those cases, Kurchner filed an arbitration for expungement of a customer dispute in which there had been an adverse arbitration award. After FINRA notified him that adverse arbitration awards are inappropriate for an expungement arbitration, he sought Commission review of that decision. Further, like many of applicants in the Consolidated Arbitration Appeals, Kurchner is represented by counsel associated with the law firm HLBS Law. *See* RP 12.

Commission Rule of Practice 161(a) authorizes the Commission to order postponement for "good cause shown." 17 C.F.R. § 201.161(a). Rule of Practice 161(b) sets forth the factors

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<sup>3</sup> The Commission initially consolidated the Consolidated Arbitration Appeals to determine whether it had jurisdiction to review them. After determining that it had jurisdiction, the Commission found that the proceeding should continue to be consolidated for purposes of briefing the merits.

the Commission must consider in determining whether to grant a postponement, including: (1) the length of the proceeding to date; (2) the number of previous postponements granted; (3) the stage of the proceedings at the time of the request for postponement; and (4) any other such matters as justice may require. 17 C.F.R. § 201.161(b). These factors favor postponement here.

Kurchner's appeal was filed two weeks ago and there have been no previous postponements. Moreover, consolidating this appeal with the Consolidated Arbitration Appeals would promote administrative efficiency and avoid the need for the parties to file briefs which repeat the same arguments. Accordingly, the Commission should grant FINRA's unopposed motion to consolidate Kurchner's appeal with the Consolidated Arbitration Appeals and postpone briefing.

Respectfully submitted,

/s/ Jennifer Brooks

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September 2, 2021

**CERTIFICATE OF SERVICE**

I, Jennifer Brooks, certify that on this 2nd day of September 2021, I caused a copy of the foregoing Unopposed Motion to Consolidate and Postpone Briefing, in the matter of the Application of Jason Harry Kurchner, Administrative Proceeding File No. 3-20467, to be filed through the SEC's eFAP system on:

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

and served by electronic mail on:

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**CERTIFICATE OF COMPLIANCE**

I, Jennifer Brooks, certify that this motion complies with the Commission's Rules of Practice by filing a motion that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

*/s/ Jennifer Brooks*

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