

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

In the Matter of the Application of

Shaun Perry Nicholson

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-20529

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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December 6, 2021

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

In the Matter of the Application of

Shaun Perry Nicholson

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-20529

FINRA’S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

This case involves Shaun Perry Nicholson’s attempt to relitigate an arbitration claim that he previously lost on the merits in FINRA’s arbitration forum. Nicholson is seeking to expunge disclosures of two customer complaints from FINRA’s Central Registration Depository® (“CRD®”) and BrokerCheck®. In 2017, Nicholson sought expungement of these complaints in FINRA’s arbitration forum, but the arbitrator denied his claim after considering the pleadings, testimony, and evidence, including information provided by one of the former customers.

Nicholson did not accept the arbitrator’s decision. Instead, more than a year later, Nicholson, an Ohio resident, filed a motion to vacate the arbitrator’s award in a Colorado state court. Nicholson’s motion alleged, essentially, that the arbitrator’s decision should be overturned because the arbitrator reached the wrong result. UBS Financial Services Inc., the named defendant in the state court action and Nicholson’s employer, did not respond to Nicholson’s filing, and the state court entered a default judgment vacating the arbitrator’s award.

There was no hearing on the merits; the state court did not receive evidence from Nicholson's customers or FINRA.

After obtaining the default judgment from the state court, Nicholson filed a new statement of claim in FINRA's arbitration forum seeking expungement of the same customer complaints. The Director of FINRA's Office of Dispute Resolution ("DR") did not accept Nicholson's second statement of claim because he determined that Nicholson already had fully arbitrated his expungement claim to a final decision on the merits in FINRA's arbitration forum.¹ Nicholson then filed his application for review seeking to compel FINRA to allow him to relitigate his expungement claim.

The Commission should dismiss Nicholson's application for review because it lacks jurisdiction to review the Director's determination not to accept Nicholson's statement of claim. FINRA did not deny Nicholson access to FINRA's arbitration service; Nicholson accessed the service once and fully litigated his expungement claims to a final award. Because Nicholson 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. 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

¹ FINRA's Office of Dispute Resolution is now called Dispute Resolution Services. This brief refers to that department as DR, regardless of which name was in effect at the time of the relevant event.

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. 43809 (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 43812-813. 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 43813.

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).

B. The Milisits and Rue Customer Complaints

Nicholson entered the securities industry in 1981. RP 11. Between 1988 and 1992, Nicholson was registered with PaineWebber Inc. RP 11. From 1992 to 2000, Nicholson was registered with another FINRA member. RP 36. In 2000, Nicholson registered with PaineWebber's successor, UBS Financial Services Inc., where he remains registered.² RP 11. During Nicholson's career, several customers filed complaints alleging that Nicholson engaged in misconduct. RP 45-89. Two of those customer complaints are at issue here.

The first complaint at issue was filed in 1989 by Nicholson's customers Joseph and Jean Milisits. RP 49-50. The Milisitses alleged that Nicholson made four unauthorized purchases in their account. RP 49-50. The Milisitses claimed damages of \$19,851. RP 49. PaineWebber settled with the Milisitses for \$19,000, of which Nicholson agreed to pay \$8,000. RP 50. This complaint and settlement are recorded in CRD® as Occurrence No. 337063 and disclosed to the public through BrokerCheck®. *See* RP 49.

The second complaint at issue was filed in 1992 by Nicholson's customer Donna P. Rue. RP 45-46. Rue filed an arbitration claim against PaineWebber, Nicholson, and another

² UBS acquired PaineWebber in 2000. *See* RP 11.

registered person alleging breach of fiduciary duty, suitability violations, failure to supervise, and misrepresentation. RP 45-48. Rue claimed damages of \$30,000. RP 48. The case was settled for \$10,000, of which Nicholson and the other registered person agreed to pay \$4,000. RP 46. This complaint and settlement are recorded in CRD® as Occurrence No. 51044 and disclosed to the public through BrokerCheck®. *See* RP 45.

C. After a Hearing on the Merits, a FINRA Arbitrator Denies Nicholson’s Request to Expunge the Milisits and Rue Customer Complaints

In November 2017, Nicholson filed two statements of claim with DR seeking to expunge from CRD® the disclosure of five customer complaints, including the Milisits and Rue complaints. RP 1-2.³ The two proceedings were later consolidated into one case. *See* RP 3. Nicholson named UBS as the respondent. RP 1.⁴ UBS did not oppose Nicholson’s claim for expungement. *See* RP 2.

The arbitrator held a hearing by telephone in June 2018. RP 4. The Milisitses participated in the hearing and opposed Nicholson’s request for expungement. RP 4. None of the other customers participated. RP 4. As part of the proceeding, the arbitrator reviewed Nicholson’s BrokerCheck® report and the settlement documents for the Milisits and Rue complaints. RP 4. There were no settlement documents for the other two customer complaints because the parties did not settle those disputes. RP 4. The arbitrator issued a written final award in July 2018. *See* RP 1-8. In his award, the arbitrator wrote that, after considering all of the evidence presented at the hearing, he was issuing a “full and final resolution” recommending

³ The other three customer complaints were filed by customers Buckley, Slesinger, and White (Occurrences No. 51042, 1014910, and 51045, respectively). RP 12. At the hearing, Nicholson withdrew his request for expungement of the Buckley complaint. RP 4.

⁴ Nicholson also named Barclays Capital Inc. as a respondent, but he later withdrew his claims against that firm. *See* RP 3.

expungement of the complaints arising from the two unsettled customer disputes but denying Nicholson's request to expunge the Milisits and Rue complaints. RP 5.

D. Nicholson Obtains a Default Judgment in State Court Vacating the Arbitrator's Award Denying Expungement

Months later, Nicholson, an Ohio resident, filed pleadings in a Colorado state court seeking to confirm the favorable part of the arbitrator's award and vacate the rest of it. In December 2018, Nicholson filed a pleading titled "Motion to Confirm Arbitration Award." *See* Exhibit 1, hereto.⁵ In that pleading, Nicholson asked the court to confirm the part of the arbitrator's award recommending expungement of two of the customer complaints. Exhibit 1 at 6. In January 2019, the court granted Nicholson's motion and confirmed the part of the arbitrator's award recommending expungement of those complaints. *See* Exhibit 2, hereto, at 6.

In December 2019, more than a year after the arbitrator had issued the award, Nicholson filed another pleading in the same Colorado state court seeking judicial vacatur of the remainder of the arbitrator's award pursuant to the Federal Arbitration Act (the "FAA"). *See* Exhibit 2 at 1.⁶ In a pleading titled "Motion to Vacate Award, In Part" Nicholson asked the court to vacate the part of the arbitrator's award denying expungement of the Milisits and Rue complaints. *See* Exhibit 2, hereto. Nicholson named UBS as the respondent. *See* Exhibit 2 at 1. Nicholson did

⁵ 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, at *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).

⁶ Under the FAA, an action to vacate an arbitration award must be served within three months of the delivery of the award. 9 U.S.C. § 12. "A party to an arbitration award who fails to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award." *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158 (10th Cir. 2007). The arbitrator's award was delivered in July 2018. *See* RP 8. Nicholson did not file his motion to vacate until December 2019. *See* Exhibit 2.

not name FINRA as a party or give FINRA notice of the proceeding. *See* Exhibit 2. Nor did Nicholson give notice to the Milisitses or Rue. *See* Exhibit 2.

The crux of Nicholson’s motion to vacate was that the arbitrator’s award should be vacated because the arbitrator reached the wrong result. Nicholson alleged that the “record clearly indicates that Mr. Milisits and Ms. Rue possessed sufficient knowledge about financial investments, acknowledged the risks associated with investing, and alleged misconduct against [Nicholson] only after sustaining financial loss even though investigations were conducted and determined the [Nicholson] did nothing wrong and the allegations were without merit.” Exhibit 2 at 7. Nicholson alleged that his motion to vacate should be granted because, by denying expungement of the customer complaints, the arbitrator “exceeded his powers and manifestly disregarded the law[.]” Exhibit 2 at 7.⁷ UBS did not respond to Nicholson’s motion. *See* Opening Br. at 4.

In February 2020, the Colorado state court entered a default judgment in Nicholson’s favor. *See* Exhibit 3, hereto. The court entered a proposed order submitted by Nicholson stating that the “Request for Default Judgment is hereby granted and the judgment is entered vacating the arbitration award” in the FINRA arbitration. Exhibit 3 at 2.

E. The Director Determines that Nicholson’s Second Statement of Claim for Expungement Is Ineligible for Arbitration

After obtaining the default judgment vacating the arbitrator’s award, Nicholson filed a new statement of claim with DR once again seeking expungement of the Milisits and Rue

⁷ Nicholson’s motion to vacate was based on the arbitrator’s allegedly incorrect factual findings. However, “[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 F. App’x 848, 851 (5th Cir. 2009). Likewise, manifest disregard of the law is not grounds for vacating an arbitration award. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008).

customer complaints. Nicholson alleged that he 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 16. Because Nicholson previously had accessed the forum and fully litigated expungement of the same customer complaints on the merits, however, the Director determined that his claim was not eligible for arbitration and declined to accept it pursuant to FINRA Rule 13203(a). RP 21. Nicholson then filed an application for review with the Commission seeking review of the Director’s determination that his claim was not eligible for arbitration. RP 23-25.

II. ARGUMENT

A. The Commission Lacks Jurisdiction to Review the Director’s Determination

The Commission should dismiss Nicholson’s application for review because it lacks jurisdiction to review the Director’s determination that Nicholson’s 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 Nicholson access to its arbitration services. FINRA accepted Nicholson’s first statement of claim seeking to expunge the Milisits and Rue customer complaints and allowed him to fully litigate it in FINRA’s arbitration forum. After an evidentiary hearing, the arbitrator denied Nicholson’s request for expungement on the merits. The arbitrator issued a final written award denying Nicholson’s expungement request in “full and final resolution” of the issues. RP 5.

FINRA's decision not to accept Nicholson'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 Tylor Aiguier* compels this result. See Exchange Act Release No. 88953, 2020 SEC LEXIS 1430 (May 26, 2020). In that case, 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.

The same is true here. That FINRA did not allow Nicholson repeat access to its arbitration service does not change the fact that he previously accessed that service. See *id.* As with the applicant's claim in *Aiguier*, Nicholson's claim that FINRA should have allowed him to relitigate his expungement request in light of the Colorado default judgment "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.*

Nicholson erroneously asserts, in a footnote, that the order in *Consolidated Arbitration Applications* establishes the Commission's jurisdiction over his appeal. Opening Br. at 5; 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 Nicholson, 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, Nicholson's first claim seeking expungement of the Milisits and Rue complaints was denied after a hearing on the merits.

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

Nicholson makes several arguments that FINRA should not have denied him access to the arbitration forum. None of these arguments, however, contest that he had a hearing on the merits of his request to expunge from CRD® the disclosures of Milisits and Rue 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, Nicholson's arguments are to no effect because the Director properly exercised his authority under FINRA Rule 13203 by denying Nicholson'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 Nicholson to access FINRA's arbitration forum and relitigate expungement until he gets the outcome he 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 he obtained the desired outcome. The Director has authority under FINRA Rule 13203 to prevent such abuse and maintain the integrity of the expungement process.

Contrary to Nicholson's assertion, the Director's proper exercise of his discretion under FINRA Rule 13203 does not constitute a new rule. *See* Opening Br. at 7-8. 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. 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." *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).

The Director's determination to deny Nicholson's second statement of claim is consistent with FINRA's position in other similar cases. Nicholson erroneously asserts that there are "numerous cases" in which FINRA permitted a claimant to access FINRA's arbitration forum a second time after the claimant obtained a vacatur of an adverse arbitration claim. *See* Opening Br. at 9. Even if this were an accurate statement, it would not matter. That FINRA previously permitted an applicant to relitigate an arbitration claim in its forum after obtaining a vacatur order would not obligate the Director to accept Nicholson's second statement of claim here, nor would it establish Commission jurisdiction over this matter.

Moreover, there are not "numerous cases" involving relitigation of expungement claims. Only two of the four cases Nicholson cites in his brief arose in the context of an expungement proceeding, *Valenzuela v. Smith* and *Wu v. J.P. Morgan Securities LLC*. *See* Opening Br. at

Exhibits 1 and 4. *Valenzuela*, a 2014 decision, and *Wu*, a 2019 decision, were early cases in which a registered person was able to relitigate the denial of a claim for expungement in FINRA's arbitration forum after obtaining a vacatur order. More recently, however, the Director has declined to accept arbitration claims seeking to relitigate denials of expungement requests. Indeed, the applicants in several of those cases have appealed those denials to the Commission. *See, e.g., Cynthia Marie Couyoumjian*, Administrative Proceeding No. 3-20154.

The other cases Nicholson's cites are inapposite because they did not involve claims for expungement of customer dispute information from CRD®. Instead, these cases involved disputes between customers and FINRA members or associated persons. *See* Opening Br. at Exhibits 2, 3. In *Millman v. Sahu*, the claimant alleged that the respondents, a registered representative and his firm, mismanaged the claimant's brokerage account and engaged in other misconduct that caused damages to the claimant. *See* Exhibit 2 at 2-3. In *Parker v. Interactive Brokers*, the claimants alleged that the respondents, two firms, failed to supervise the trustee of a trust, which causes damages to the claimants, who were the trust's beneficiaries. *See* Exhibit 3 at 2-3. FINRA does not have a regulatory interest in the outcome of such private disputes, and thus the Director exercised his discretion and accepted those claims for arbitration. By contrast, because of its obligation to ensure the integrity of CRD®, FINRA has a strong regulatory interest in any case in which an associated person seeks to expunge customer dispute information from CRD®. The Director's denial of Nicholson's attempt to relitigate expungement of the Milisits and Rue customer complaints was consistent with FINRA's regulatory interest in maintaining the integrity of the information in CRD®.

III. CONCLUSION

FINRA granted Nicholson access to FINRA's arbitration service, and an arbitrator held a hearing on the merits of Nicholson's expungement request. FINRA's refusal to allow Nicholson to access to its arbitration forum to litigate the same expungement request a second time does not create jurisdiction for Commission review. Accordingly, the Commission should dismiss Nicholson's application for review for lack of jurisdiction.

Respectfully submitted,

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December 6, 2021

CERTIFICATE OF COMPLIANCE

I, Michael M. Smith, certify that this brief complies with the Commission's Rules of Practice by omitting or redacting any sensitive or personal information described in Rule of Practice 151(e).

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CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 6th day of December, 2021, I caused *FINRA's Brief in Opposition to the Application for Review* in the Matter of the Application of Shaun Perry Nicholson, Administrative Proceeding No. 3-20529, to be filed with and served through the SEC's eFAP system on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

and served by electronic mail on:

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**BEFORE THE
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Shaun Perry Nicholson

For Review of Action Taken by

FINRA

File No. 3-20529

**INDEX OF EXHIBITS TO FINRA'S OPPOSITION
TO THE APPLICATION FOR REVIEW**

<u>Attachment</u>	<u>Description</u>
1	Motion to Confirm Arbitration Award
2	Motion to Vacate Arbitration Award, In Part
3	Order for Default Judgment

Exhibit 1



Notice of Service of Process

Transmittal Number: 19134721
Date Processed: 12/24/2018

Primary Contact: Timothy Mountz
Financial Industry Regulatory Authority, Inc. (FINRA)
1735 K Street NW
Washington, DC 20006-1506

Electronic copy provided to: Angela Saffoe
Sara Jeffries
B. Brooks
Jessica Sarkis
Suzanne Duddy
Fariba Naim
Terri Reicher

Entity: Financial Industry Regulatory Authority, Inc.
Entity ID Number 3418835

Entity Served: Financial Industry Regulatory Authority, Inc.

Title of Action: Shaun Perry Nicholson vs. Financial Industry Regulatory Authority, Inc.

Document(s) Type: Summons and Notice

Nature of Action: Contract

Court/Agency: Broomfield County District Court, CO

Case/Reference No: 2018CV30434

Jurisdiction Served: Delaware

Date Served on CSC: 12/24/2018

Answer or Appearance Due: 35 Days

Originally Served On: CSC

How Served: Certified Mail

Sender Information: Owen Harnett
720-523-8118

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251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com



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December 19, 2018

VIA U.S. Certified Mail – 7018 0360 0001 6106 6041

Financial Industry Regulatory Authority, Inc.
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

RE: Submission of Documents

To Whom It May Concern:

This letter is to inform you that a Motion to Confirm the Arbitration Award have been submitted to the Colorado Courts for the following cases:

- Shaun Perry Nicholson v. Financial Industry Regulatory Authority; Case ID: 2018CV030434

Please do not hesitate to call or email to discuss any questions or concerns you may have.

Respectfully,

Owen Harnett
Managing Attorney

Enclosures

OS Received 12/06/2021

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: December 18, 2018 3:50 PM FILING ID: 539F716C0F0FB CASE NUMBER: 2018CV30434
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.	COURT USE ONLY ▲ ▲
Attorney for Petitioner: Name: Owen Harnett, #49899 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 523-8118 E-mail: owen.harnett@hlbslaw.com	Case Number: Division Courtroom
MOTION TO CONFIRM ARBITRATION AWARD	

Petitioner, SHAUN PERRY NICHOLSON, through undersigned counsel states the following: PETITIONER RESPECTFULLY REQUEST A JUDGMENT CONFIRMING AN ARBITRATION AWARD.

PARTIES

1. PETITIONER, Shaun Perry Nicholson, (CRD #729670), is a resident of Beaver Creek, Ohio and has been working in securities since March of 1981. The Petitioner was employed by Barclays Capital, Inc. (CRD #19714) between March of 1981 and March of 1988. The Petitioner was employed by UBS Financial Services, Inc. (CRD #8174) between February of 1988 and August of 1992, and has been employed, since August of 2000.

2. RESPONDENT, Financial Industry Regulatory Authority, Inc., (FINRA) is a corporation organized and existing under the laws for the state of Delaware and is and was at all times mentioned herein qualified to do business in Colorado. FINRA is a Self - Regulatory Organization, as defined in the 1934 Securities and Exchange Act, whose duties include maintaining a Central Registration Depository (“CRD”). The CRD keeps a public record of, among other things, securities brokers’ license status and all customer complaints and regulatory actions brought against each broker.

JURISDICTION/VENUE

3. 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 because FINRA has minimum contacts with Colorado. Further, because FINRA oversees the licensing of all securities brokers in Colorado, FINRA’s commercial activities impact Colorado on a substantial, continuous, and systematic basis.
4. Venue is proper in this Court because FINRA has a regional office located in Denver, Colorado. Petitioner’s counsel is located just northwest of Denver in close proximity of Broomfield, Colorado, where a majority of the evidence is located.

FACTS

I. FINRA Case #17-03197

5. Petitioner filed for FINRA arbitration and signed a submission agreement to arbitrate on November 29, 2018, to expunge the customer disputes, Occurrence #51042, #51044, and

#51045, from his registration records maintained by the Central Registration Depository (“CRD”). (*see*, Exhibit 1)

6. On April 23, 2018, Petitioner filed a Motion to Dismiss Barclays Capital, Inc. (“Barclays”) from FINRA Case #17-03197 because occurrence #51042 occurred with a bankrupt firm that was purchased by Barclays. FINRA rules do not confer jurisdiction to claims concerning a firm that was bankrupt at the time.
7. In addition to dismissing Barclays, Petitioner filed a Motion to Consolidate with another arbitration in the interest of judicial efficiency as both arbitrations shared the same Respondent, which was UBS Financial Services, Inc. (“UBS”). UBS’s counsel graciously agreed to not oppose the consolidation request by Petitioner.
8. On, May 1, 2018, the Motion to Dismiss and Consolidate were granted and Barclay’s Capital, Inc. was dismissed and the remaining occurrences, #51044 and #51045 were joined with FINRA Case #17-02982

II. FINRA Case #17-02982

1. Petitioner filed for FINRA arbitration and signed a submission agreement to arbitrate on November 6, 2017, to expunge the customer disputes, Occurrences #337063 and #1014910, from his registration records maintained by the Central Registration Depository (“CRD”). (*see*, Exhibit 2)
2. On May 2, 2018, UBS filed an answer stating they do not oppose the expungement request by Petitioner.
3. On December 7, 2017, UBS, filed a submission agreement to arbitrate. (*see*, Exhibit 3)

4. As discussed above, UBS did not oppose the consolidation of occurrences #51044 and #51045 into this case.
5. This case went to arbitration on June 28, 2018. The Arbitrator heard the following occurrences: #337063, #1014910, #51044, and #51045.
6. On July 31, 2018, the Arbitrator executed an Award recommending expungement of Occurrence #1014910 and #51045 to the Underlying Complaint from Petitioner's registration records maintained by the CRD. (*see*, Exhibit 4)
7. Pursuant to Rule 13805 of the Code of Arbitration Procedure, the Arbitrator made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is false.

FIRST CLAIM FOR RELIEF

8. Petitioner respectfully requests confirmation of the expungement award in FINRA case #17-02982 and directs the arbitration award to be executed to allow the expungement of the customer disputes, Occurrence #1014910 and #51045, from FINRA's CRD system.

WHEREFORE Petitioner, SHAUN PERRY NICHOLSON, requests confirmation of an arbitration Award and for such other relief as the Court deems proper.

Date: December 18, 2018

/s/Owen Harnett
Owen Harnett
Attorney for Petitioner

Exhibit List

Exhibit 1 – Submission Agreement for Shaun Perry Nicholson, signed November 29, 2017

Exhibit 2 – Submission Agreement for Shaun Perry Nicholson, signed November 6, 2017

Exhibit 3 - Submission Agreement for UBS , signed December 7, 2017

Exhibit 4 – Executed Arbitration Award, signed July 31, 2018

EXHIBIT 1

FINRA ARBITRATION Submission Agreement

Claimant(s)

Shaun Perry Nicholson

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Shaun Perry Nicholson

and

Name(s) of Respondent(s)

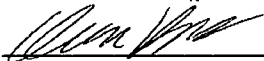
Barclays Capital Inc.

UBS Financial Services Inc.

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.
2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.
3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.
4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

Shaun Perry Nicholson

Claimant Name (please print)



as attorney

November 29, 2017

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

Claimant Name (please print)

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

EXHIBIT 2

FINRA ARBITRATION Submission Agreement

Claimant(s)

Shaun Perry Nicholson

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Shaun Perry Nicholson

and

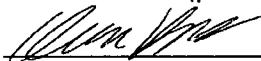
Name(s) of Respondent(s)

UBS Financial Services Inc.

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.
2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.
3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.
4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

Shaun Perry Nicholson

Claimant Name (please print)

 as attorney

November 6, 2017

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

Claimant Name (please print)

Claimant's Signature

Date

State capacity if other than individual (e.g., executor, trustee or corporate officer)

EXHIBIT 3

FINRA ARBITRATION Submission Agreement

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Shaun Perry Nicholson

17-02982

Name(s) of Respondent(s)

UBS Financial Services Inc.

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.
2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.
3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of FINRA Office of Dispute Resolution or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.
4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.



UBS Financial Services Inc.

State Capacity if other than individual (e.g., executor, trustee, corporate officer)

Craig A. Vollono, Esq., Director

12/9/17
Date

LC43A: SUBMISSION AGREEMENT

idr: 06/13/2016

RECIPIENTS:

Kenneth Crowley, Esq., UBS Financial Services Inc.

UBS Financial Services Inc., 1000 Harbor Boulevard, 8th Floor, Weehawken, NJ 07086

EXHIBIT 4

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Shaun Perry Nicholson

Case Number: 17-02982

vs.

Respondent
UBS Financial Services Inc.

Hearing Site: Cincinnati, Ohio

Consolidated with:

Claimant
Shaun Perry Nicholson

Case Number: 17-03197

vs.

Respondents
Barclays Capital Inc. and
UBS Financial Services Inc.

Hearing Site: Cincinnati, Ohio

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant Shaun Perry Nicholson ("Claimant" or "Nicholson"): Owen Harnett, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Barclays Capital Inc. ("Barclays"): John W. Mitchell, Esq., Barclays, New York, New York.

For Respondent UBS Financial Services Inc. ("UBS"): Patrick S. Christensen, Esq., Bressler, Amery & Ross, P.C., New York, New York.

CASE INFORMATION

Case No. 17-02982:

Statement of Claim filed on or about: November 6, 2017.
Claimant signed the Submission Agreement: November 6, 2017.

Statement of Answer filed by UBS on or about: December 26, 2017.
UBS signed the Submission Agreement: December 7, 2017.
Amended Statement of Answer filed by UBS on or about: May 2, 2018.

Case No. 17-03197:

Statement of Claim filed on or about: November 29, 2017.
Claimant signed the Submission Agreement: November 29, 2017.

CASE SUMMARY

Case No. 17-02982:

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers 337063 and 1014910, from his registration records maintained by the Central Registration Depository ("CRD").

In the Amended Statement of Answer, UBS did not oppose the request for expungement. UBS objected to Claimant's demand for monetary damages in the amount of one dollar (\$1.00).

Case No. 17-03197:

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers 51042, 51044, and 51045, from his registration records maintained by the CRD.

RELIEF REQUESTED

Case No. 17-02982

In the Statement of Claim, Claimant requested expungement, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deemed just and equitable.

In the Amended Statement of Answer, UBS requested Claimant's request for compensatory damages be denied, that all forum fees be assessed against Claimant, and that all other fees associated with this matter be assessed solely against Claimant.

Case No. 17-03197

In the Statement of Claim, Claimant requested expungement, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deemed just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

Case No. 17-02982:

In the Initial Pre-Hearing Conference (“IPHC”) Scheduling Order dated March 21, 2018, the Arbitrator granted Claimant’s oral request to withdraw the \$1.00 in compensatory damages.

On or about April 6, 2018, Claimant filed a copy of the letters sent to the customers for Occurrence Numbers 337063 and 1014910, providing them with the Statement of Claim, notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. On or about April 11, 2018, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that the customers for Occurrence Numbers 337063 and 1014910 had been served with the Statement of Claim.

Case No. 17-03197:

Barclays did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement or Statement of Answer, but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

UBS did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement or Statement of Answer, but is required to submit to arbitration pursuant to the Code, and having appeared and participated at the IPHC, is bound by the determination of the Arbitrator on all issues submitted.

On or about January 29, 2018, Claimant filed a Notice of Voluntary Dismissal without Prejudice for his claims against Barclays.

In the IPHC Scheduling Order dated April 11, 2018, the Arbitrator ordered that the request to consolidate Case No. 17-03197 and 17-02982 be submitted no later than April 13, 2018, with citation and copy of applicable FINRA rule(s) and reasoning for allowing consolidation of the two cases.

Case No. 17-02982:

On or about April 11, 2018, Claimant filed a Motion to Consolidate. On or about April 11, 2018, UBS filed a Response in Support of Claimant’s Motion to Consolidate. In his Order dated April 14, 2018, the Arbitrator temporarily denied the Motion to Consolidate and requested additional information.

On or about April 17, 2018, Claimant filed a Renewed Motion to Consolidate. On or about April 17, 2018, UBS filed a Response to Claimant’s Renewed Motion to Consolidate. In his Order dated April 23, 2018, the Arbitrator granted Claimant’s Renewed Motion to Consolidate Case No. 17-03197 and 17-02982. Thereafter, the two cases proceeded under FINRA Case No. 17-02982.

On or about April 20, 2018, Claimant filed copies of the letters sent to the customers for Occurrence Numbers 51044 and 51045, providing them with the Statement of Claim,

notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. Also on April 20, 2018, Claimant filed a Notice of Death Record and an Obituary for the customer for Occurrence Number 51042. On or about April 27, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the customers for Occurrence Numbers 51044 and 51045 had been served with the Statement of Claim and that Claimant was unable to serve the Statement of Claim on the customer for Occurrence Number 51042, as she is deceased.

On or about May 2, 2018, Claimant filed copies of the letters sent to the customers for Occurrence Numbers 337063 and 1014910 with notice that, pursuant to the Arbitrator's Order, Case No. 17-02982 had been consolidated with Case No. 17-03197. On or about May 8, 2018, Claimant filed a submission of proof of service to customers for Occurrence Numbers 337063, 1014910, 51044, and 51045.

On or about June 27, 2018, customer J.M. filed a written submission in opposition of the expungement request for Occurrence Number 337063.

The Arbitrator conducted a recorded, telephonic hearing on June 28, 2018, for the presentation of testimony and evidence on Nicholson's requests for expungement. UBS participated in the expungement hearing.

Customer J.M. participated in the expungement hearing and contested the request for expungement for Occurrence Number 337063. None of the other customers participated in the expungement hearing.

On the record at the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages, which originated from Case No. 17-03197.

On record at the hearing, Claimant withdrew his request for expungement of all references for Occurrence Number 51042 from the registration records maintained by the CRD.

The Arbitrator reviewed the BrokerCheck® Report for Nicholson and the settlement documents for Occurrence Numbers 337063 and 51044, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements.

For Occurrence Number 1014910, there was no settlement.

For Occurrence Number 51045, there was no written settlement agreement. The transactions were reversed and the customer received no damages.

The Arbitrator noted that Nicholson did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Occurrence Number 1014910: Nicholson's testimony, Nicholson's BrokerCheck® Report, Claimant's Exhibits 11 and 12 (customer's complaint and Firm's Letter responding to customer's complaint), and the Statement of Claim.
- Occurrence Number 51045: Nicholson's testimony and Nicholson's BrokerCheck® Report.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Nicholson's requests for expungement of Occurrence Numbers 337063 and 51044 from his CRD records are denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 1014910 from the registration records maintained by the CRD for Claimant Shaun Perry Nicholson (CRD# 729670) with the understanding that, pursuant to Notice to Members 04-16, Claimant Shaun Perry Nicholson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The customer's claim that Nicholson recommended an unsuitable investment in a commodity fund and that she was not advised of the risks involved is false. The customer had been investing in a commodity fund for six years before filing a complaint. In addition, the customer had opened a second commodity fund with a different brokerage firm about five years prior to filing the complaint. UBS reviewed the complaint and notified the customer of the denial of her claim. No further action was taken by the customer.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 51045 from the registration records maintained by the CRD for Claimant Shaun Perry Nicholson (CRD# 729670) with the understanding that, pursuant to Notice to Members 04-16, Claimant Shaun Perry Nicholson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The alleged unauthorized purchase is false because the customer called in the next morning after the trade, before ever receiving a trade confirmation and said that she needed to cancel the trade. The customer therefore knew that she had authorized the trade. The trade was cancelled that day as an accommodation and there were no damages.

4. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 50.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, UBS is assessed the following:

Member Surcharge	= \$ 150.00
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Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision =\$ 200.00

Claimant submitted (1) discovery-related motion
Total Discovery-Related Motion Fee =\$ 200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fee to Claimant.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session =\$ 50.00
Pre-hearing conference: March 21, 2018 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session =\$ 100.00
Hearing Date: June 28, 2018 2 sessions

Total Hearing Session Fees =\$ 150.00

The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

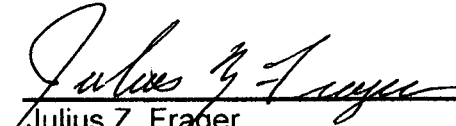
ARBITRATOR

Julius Z. Frager

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature



Julius Z. Frager
Sole Public Arbitrator

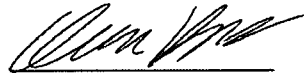
July 31, 2018
Signature Date

July 31, 2018

Date of Service (For FINRA Office of Dispute Resolution office use only)

CERTIFICATE OF SUBMISSION

The undersigned hereby certifies that a true and correct copy of the above Motion to Confirm Arbitration Award was served to the Registered Agent for FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. via U.S. Certified Mail.



Owen Harnett
Attorney

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: December 18, 2018 3:50 PM FILING ID: 539F716C0F0FB CASE NUMBER: 2018CV30434
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Division: Courtroom:
DISTRICT COURT CIVIL SUMMONS	

TO THE ABOVE NAMED RESPONDENT: Financial Industry Regulatory Authority, Inc.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court an answer or other response to the attached Motion. If service of the Summons and Motion 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 Motion 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 Motion in writing within the applicable time period, the Court may enter judgment by default against you for the relief demanded in the Motion without further notice.

Dated: December 18, 2018

 Clerk of Court/Clerk

/s/ Owen Harnett
 Owen Harnett
 Attorney for Petitioner

This Summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the Motion 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.

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: December 18, 2018 3:50 PM FILING ID: 539F716C0F0FB CASE NUMBER: 2018CV30434
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.	COURT USE ONLY ▲ ▲
Attorney for Petitioner: Name: Owen Harnett, #49899 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 523-8118 E-mail: owen.harnett@hlbslaw.com	Case Number: Division Courtroom
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT	

1. This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Check one of the following:

- This case is governed by C.R.C.P. 16.1 because:
 - The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*
 - A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

OS Received 12/06/2021

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

Another party has previously indicated in a Case Cover Sheet that the simplified procedure under C.R.C.P. 16.1 does not apply to the case.

NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).

A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

C.R.C.P. 16.1 applies to this case.

C.R.C.P. 16.1 does not apply to this case.

3. This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: December 18, 2018

/s/ Owen Harnett
Signature of Attorney for Party

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: December 18, 2018 3:50 PM FILING ID: 539F716C0F0FB CASE NUMBER: 2018CV30434
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Division: Courtroom:
ORDER FOR CONFIRMATION OF ARBITRATION AWARD	

This Court having reviewed the request for Confirmation of an Arbitration Award submitted by the Petitioner hereby orders:

The request for Confirmation of an Arbitration Award is hereby granted and the judgement is entered confirming the expungement award in FINRA Case #17-02982, consolidated with FINRA Case #17-03197, and directing the arbitration award to be executed to allow the expungement of the customer disputes, Occurrence #1014910 and #51044, from FINRA's CRD system.

Date: _____

 Judge / Magistrate

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	DATE FILED: December 18, 2018 3:50 PM FILING ID: 539F716C0F0FB CASE NUMBER: 2018CV30434
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.	COURT USE ONLY ▲ ▲
Attorney for Petitioner: Name: Owen Harnett, #49899 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 523-8118 E-mail: owen.harnett@hlbslaw.com	Case Number: Division Courtroom
CERTIFICATE OF CONFERRAL	

Pursuant to C.R.C.P. 121 Section 1-15(8), undersigned counsel hereby certifies that he has not conferred with counsel for Respondent, Holland & Hart regarding the opposition or non-opposition of the Motion to Confirm the Arbitration Award filed with the Colorado Courts on December 18, 2018. Therefore, this Motion to Confirm the Arbitration Award is not a stipulation.

Date: December 18, 2018

/s/ Owen Harnett
 Owen Harnett
 Attorney for Petitioner

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Exhibit 2

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020 (720) 887-2100	DATE FILED: December 18, 2019 2:22 PM FILING ID: AAAED73630D35 CASE NUMBER: 2019CV30551
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: UBS FINANCIAL SERVICES INC.	COURT USE ONLY ▲ ▲
Attorney for Petitioner: Name: Owen Harnett, #49899 Address: HLBS Law 9737 Wadsworth Parkway G-100 Westminster, CO 80021 Telephone: (720) 515-9069 E-mail: owen.harnett@hlbslaw.com	Case Number: Division Courtroom
MOTION TO VACATE ARBITRATION AWARD, IN PART	

Petitioner, Shaun Nicholson, by and through undersigned counsel, hereby respectfully submits this Motion to Vacate Arbitration Award, In Part, and as grounds states the following:

PARTIES

1. Petitioner, Shaun Perry Nicholson (CRD #729670), is a resident of Beave Creek, Ohio, has worked in the securities industry since March of 1981, and is currently a financial advisor at UBS Financial Services, Inc. in Miamisburg, Ohio.

2. Respondent, UBS Financial Services, Inc. (“UBS”) (f/k/a PaineWebber Incorporated, UBS PaineWebber Inc.) (CRD # 8174), is a securities broker-dealer, investment adviser firm, and FINRA member firm with its corporate headquarters in Weehawken, New Jersey.

UBS is, and was at all times relevant hereto, qualified to do business in Colorado. Between February of 1988 and August of 1992, and again since August of 2000 to present, UBS employed Mr. Nicholson as a financial advisor in Dayton, Ohio.

JURISDICTION/VENUE

3. 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 UBS's voluntary consent to submit to the jurisdiction of any court of competent jurisdiction, UBS has minimum contacts with Colorado, and UBS's commercial activities impact Colorado on a substantial, continuous, and systematic basis.

4. Venue is proper in this Court because UBS has several branch offices located in Colorado, including at least two in Denver and Boulder, Colorado. Petitioner's counsel is located just northwest of Denver in close proximity of Broomfield, Colorado, where a majority of the evidence is located.

BACKGROUND

5. Financial Industry Regulatory Authority, Inc. ("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").

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

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

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

9. 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.

10. 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).

11. 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

12. Mr. Nicholson initially filed two separate Statement of Claims with FINRA:

- a. The first one was filed on November 6, 2017 as FINRA Case Number 17-02982 seeking expungement of two customer dispute disclosures: (1) Occurrence Number 337063 with the underlying customer Mr. Milisists (the “Milisists Occurrence”), and (2) Occurrence Number 1014910 with the underlying customer Ms. Slesinger (the “Slesinger Occurrence”). See Exhibit 1.
- b. The second one was filed on November 29, 2017 as FINRA Case Number 17-03197 seeking expungement of three customer dispute disclosures: (1) Occurrence Number 51042 with the underlying customer Ms. Buckley (the “Buckley Occurrence”), (2) Occurrence Number 51044 with underlying customer Ms. Rue (the “Rue Occurrence”), and (3) Occurrence Number 51045 with underlying customer Ms. White (the “White Occurrence”). See Exhibit 2.

13. Both Statement of Claims were filed pursuant to FINRA Rule 2080 against Respondent UBS and then-named-Respondent Barclays Capital, Inc. (“Barclays”)¹ seeking a recommendation of expungement of each of the four customer disputes disclosed on Mr. Nicholson’s registration records. Both Statement of Claims also included a request for \$1 in compensatory damages.

14. On May 2, 2018, FINRA Case No. 17-03197 was closed and consolidated with FINRA Case No. 17-02982. The Buckley Occurrence was also withdrawn. The remaining proceeding was solely under FINRA Case No. 17-02982 against UBS involving four customer dispute disclosures: the Milisists, Slesinger, White, and Rue Occurrences.

¹ On January 29, 2018, Barclays Capital, Inc. was dismissed without prejudice from the action by Mr. Nicholson.

15. On May 2, 2018, UBS filed its Amended Statement of Answer² stating that they **do not oppose** the expungement relief sought by Mr. Nicholson as to any of the four customer dispute disclosures, 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 were notified of the hearing and that they had the opportunity to offer comment and evidence if they chose.

17. A recorded expungement hearing was held on June 28, 2018.³ Prior to the hearing, Mr. Nicholson submitted Exhibits 1-12 in support of his request.

18. UBS again confirmed on the record that they did not oppose expungement of all four disclosures.

19. The underlying customer Mr. Milisists opposed expungement. No other underlying customers participated or opposed expungement.

20. An award was issued on July 31, 2018 granting Mr. Nicholson's request for expungement of the Slesinger and White Occurrences but denied Mr. Nicholson's request for expungement for the Rue and Milisists Occurrences, without basis in fact or reason (the "Award"). See Exhibit 4.

21. On December 18, 2018, Mr. Nicholson filed a Motion to Confirm Arbitration Award⁴ seeking an order to FINRA to remove the Slesinger and White Occurrences from Mr. Nicholson's BrokerCheck and CRD records.

² UBS's initial Statement of Answer and Submission Agreement were filed on December 26, 2017 and December 7, 2017, respectfully, but only addressed two of the four customer dispute disclosures since it was filed before the case was consolidated. The amendment addressed all four customer dispute disclosures.

³ The transcript for this hearing will be filed as a supplemental exhibit, Exhibit 6.

⁴ Filed in Broomfield County District Court, Case Number 2018CV30434.

22. On January 25, 2019, this Court granted Mr. Nicholson's Motion to Confirm Arbitration Award, in part, which ordered the removal of the Slesinger and White Occurrences from Mr. Nicholson's registration records.

23. The Rue and Milisists Occurrences however, remain on Mr. Nicholson's record. Therefore, Mr. Nicholson is seeking an order to vacate the part of the Award that denied Mr. Nicholson's request for expungement regarding the Rue and Milisists Occurrences.

ARGUMENT

24. 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).

25. 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).

26. 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).

27. In the underlying proceeding, the Chairperson exceeded his powers and manifestly disregarded the law in denying Mr. Nicholson’s request for expungement as to the Rue and Milisists Occurrences. 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. As the arbitrator’s disclosure report attests, the Chairperson is a licensed attorney and experienced with injunctive relief litigation. See Exhibit 5. 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 Mr. Milisists and Ms. Rue possessed sufficient knowledge about financial investments, acknowledged the risks associated with investing, and alleged misconduct against Mr. Nicholson only after sustaining financial loss even though investigations were conducted and determined that Mr. Nicholson did nothing wrong and the allegations were without merit.

28. Because all of the evidence presented by the parties to the Chairperson were in support of Mr. Nicholson’s request, there is no rational interpretation of the information presented

leading to a finding of fact that the allegations against Mr. Nicholson are true. Furthermore, there was also no showing that Mr. Nicholson's request prejudiced any other party. Therefore, the law demands that Mr. Nicholson receive the relief he requested, and by denying his request, the Chairperson manifested a disregard for the law and exceeded her powers.

CONCLUSION

29. For the reasons set forth herein, Mr. Nicholson respectfully moves this Court to vacate the part of the Award in FINRA case number 17-02982 that denied Mr. Nicholson's expungement request as to the Rue Occurrence (Number 51044) and the Milisists Occurrence (Number 337063).

Date: December 18, 2019

HLBS LAW, LLC

/s/Owen Harnett

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Exhibit 3

DISTRICT COURT, BROOMFIELD COUNTY, COLORADO	
Court Address: 17 DESCOMBES DR., BROOMFIELD, CO, 80020	DATE FILED: February 24, 2020 10:01 AM CASE NUMBER: 2019CV30551
Petitioner(s) SHAUN PERRY NICHOLSON v. Respondent(s) UBS FINANCIAL SERVICES INC	
	△ COURT USE ONLY △
	Case Number: 2019CV30551 Division: B Courtroom:
Order:Proposed Order for Default Judgment	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 2/24/2020



ROBERT WALTER KIESNOWSKI JR
District Court Judge

District Court Broomfield County, Colorado Court Address: 17 Descombes Drive Broomfield, CO 80020	
Petitioner: SHAUN PERRY NICHOLSON v. Respondent: UBS FINANCIAL SERVICES INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: 2019CV30551 Division: Courtroom:
ORDER FOR DEFAULT JUDGMENT	

This Court having reviewed the request for Default Judgment submitted by the Petitioner hereby orders:

The request for Default Judgment is hereby granted and the judgment is entered vacating the arbitration award in FINRA Case No. #17-02982.

Date: _____

 Judge / Magistrate