

**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
File No. 3-20529

**MR. NICHOLSON’S OPENING BRIEF IN SUPPORT
OF APPLICATION FOR REVIEW**

INTRODUCTION

Applicant, Shaun Perry Nicholson (“Mr. Nicholson”) seeks Commission review of a determination by the FINRA Office of Dispute Resolution (“ODR”) denying Mr. Nicholson access to the Financial Industry Regulatory Authority, Inc. (“FINRA”) arbitration forum, under FINRA Code of Arbitration Procedure for Industry Disputes (“FINRA Rules”) Rules 12203(a) or 13203(a). Mr. Nicholson, by and through counsel, timely submitted his Application for Review to the Commission, under Section 19(d) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹, challenging the Director’s determination that Mr. Nicholson’s claim is ineligible for arbitration in FINRA’s Dispute Resolution Forum (“FINRA’s Forum”).

¹ 15 U.S.C. § 78s(d).

FACTUAL BACKGROUND

FINRA is a not-for-profit Delaware corporation and self-regulatory organization (“SRO”) registered with the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) as a national securities association. FINRA, through its subsidiary, FINRA Regulation, Inc., has established the FINRA ODR, whose sole function is operating an arbitration and mediation forum to resolve securities industry disputes. The ODR’s authority is limited to the administration of the forum, not regulatory policy decisions.

FINRA maintains an electronic database called the Central Registration Depository (“CRD”) and a public reporting system known as BrokerCheck.² This online, publicly marketed reporting system includes the widespread disclosure of customer complaints against each Associated Person of a FINRA member firm. The purposes of the CRD and BrokerCheck systems are (1) to create a regulatory system to improve overall regulation of advisors, (2) to make information about financial advisors available to the public, and (3) to provide financial advisors with an efficient automated filing system. FINRA requires member firms to report all customer complaints that meet specific requirements to FINRA and publicly disclose these complaints, absent any determination of merit or factual basis. As discussed below, FINRA provides only one viable remedy for almost all Associated Persons to remove false or misreported customer complaints: expungement requests, according to FINRA Rule 2080.

Mr. Nicholson (CRD # 729670) is currently a resident of Beaver Creek, Ohio, and has been a financial services professional since March of 1981. Mr. Nicholson is currently registered with UBS Financial Services Inc. (“UBS”) in Miamisburg, Ohio.

² 15 U.S.C. 78o-3(i)(1).

PROCEDURAL HISTORY

Mr. Nicholson initially filed two Statement of Claims with FINRA's ODR seeking expungement of five customer dispute disclosures published on his CRD and BrokerCheck records, pursuant to FINRA Rule 2080 and 13805:

- (1) The first was filed on November 6, 2017 (assigned FINRA Case Number 17-02982) and sought expungement of two customer dispute disclosures (a) Occurrence Number 337063 with the underlying customer Mr. Milisits (the "Milisits Occurrence"), and (b) Occurrence Number 1014910 with the underlying customer Ms. Slesinger (the "Slesinger Occurrence"); and
- (2) The second was filed on November 29, 2017 (assigned FINRA Case Number 17-03197) and sought expungement of three customer dispute disclosures: (a) Occurrence Number 51042 with the underlying customer Ms. Buckley (the "Buckley Occurrence"), (b) Occurrence Number 51044 with underlying customer Ms. Rue (the "Rue Occurrence"), and (c) Occurrence Number 51045 with underlying customer Ms. White (the "White Occurrence").

CR at 12.³ Both Statements of Claim were filed against UBS and the then-named-Respondent, Barclays Capital, Inc. ("Barclays"). However on January 29, 2018, Barclays was dismissed without prejudice from the actions by Mr. Nicholson. CR at 12. On May 2, 2018, FINRA Case No. 17-03197 was closed and consolidated with FINRA Case No. 17-02982. CR at 12. The Buckley Occurrence was also withdrawn. CR at 12. The remaining expungement requests proceeded solely under FINRA Case No. 17-02982 against UBS involving the four remaining customer dispute disclosures: the Milisits, Slesinger, White, and the Rue Occurrences. CR at 12.

³ "CR at ____" refers to the Certified Record filed by FINRA on September 14, 2021, and the corresponding cited page number.

On July 31, 2018, an award (the “Award”) was issued recommending expungement of the Slesinger and the White Occurrences but denying expungement for the Rue and Milisits Occurrences. CR at 1.

On December 18, 2019, Mr. Nicholson filed a Motion to Vacate Award, In Part (“Motion to Vacate”), in the District Court for Broomfield County, Colorado (the “Court”), and sought to vacate the part of the Award denying expungement for the Rue and the Milisits Occurrences. CR at 13. Mr. Nicholson invoked the Federal Arbitration Act (“FAA”) at 9 U.S.C. §1 et seq.⁴ Mr. Nicholson’s Motion to Vacate named UBS as the Respondent, the only party to the original FINRA case he sought to vacate. UBS did not respond to said Motion to Vacate. On February 24, 2020, the Court issued an order (the “Vacate Order”) granting Mr. Nicholson’s requested relief and vacated the part of the Award denying expungement for the Rue and the Milisits Occurrences. CR at 9-10.

On August 13, 2021, consistent with the Vacate Order, Mr. Nicholson resubmitted his Statement of Claim to FINRA’s ODR against UBS requesting a hearing for the expungement of the Rue and the Milisits Occurrences from his CRD and BrokerCheck records. Mr. Nicholson was assigned FINRA Case Number 21-02102. CR at 11.

On August 17, 2021, counsel for Mr. Nicholson received notice (the “Denial Notice”) issued by Mary T. ODonnell, a Senior Case Specialist (“Case Specialist”) with FINRA, stating that FINRA denied Mr. Nicholson access to FINRA’s arbitration forum. CR at 21. Specifically, the Denial Notice stated:

⁴ 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.” *See*, 9 U.S.C. § 10(a)(4).

FINRA denies the forum as to the request for expungement related to Occurrence Numbers 51044 and 337063. These matters are ineligible for expungement because an arbitrator or arbitration panel in FINRA case number 17-02982 previously rendered an award denying expungement for the Occurrences in FINRA's arbitration forum. Therefore, according to FINRA Rules 12203 or 13203, the Director denies the use of the forum for the expungement requests related to the Occurrences because the subject matter of this dispute is inappropriate.

CR at 21.

On September 3, 2021, Mr. Nicholson timely filed his Application for Review of FINRA's denial of the forum. On October 5, 2021, the Commission issued its briefing schedule indicating that Mr. Nicholson's brief in support of the application for review is due on November 4, 2021, the brief in opposition is due on December 6, 2021, and any reply brief is due December 20, 2021. Mr. Nicholson hereby timely submits his brief in support of the Application for Review.

JURISDICTION

The Commission has jurisdiction to hear this Application for Review under Section 19(d) of the Securities Exchange Act of 1934.⁵

LEGAL ANALYSIS

A. FINRA's denial of Mr. Nicholson's request to be heard in the FINRA Forum is not consistent with FINRA rules, the law, or fundamental notions of due process.

FINRA unilaterally decided that Mr. Nicholson's claim is "not eligible" for FINRA arbitration under FINRA Rule 12203(a) or 13203(a) and prohibited or limited Mr. Nicholson's access to the FINRA Forum. In doing so, FINRA violated its own rules, the Exchange Act, and fundamental notions of due process.

⁵ See, *Consolidated Arbitration Applications, Exchange Act Release No. 89495*, 2019 WL 6287506 (August 6, 2020) (Commission finds jurisdiction to hear claims when FINRA prohibited applicants' access to its arbitration forum to seek expungement because "FINRA's service of providing arbitration of expungement claims is 'fundamentally important' and central to its function as an SRO.>").

The Denial Notice does not align with the required standard of a determination that the “subject matter” is “inappropriate” in light of “the purposes of FINRA and the intent of the Code.”⁶ FINRA Rules 12203 and 13203 located in FINRA’s Code of Arbitration for Customer Disputes and the Code of Arbitration for Industry Guidelines Disputes respectively.⁷ Rule 13203(a) reads in its entirety:

The Director 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, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director may exercise the authority under this Rule.

FINRA’s only justification for satisfying this standard under FINRA Rule 13203 is that FINRA determined Mr. Nicholson’s request for expungement “ineligible for expungement because an arbitrator ... previously rendered an award denying expungement ... in FINRA’s arbitration forum.” CR at 21. Such a determination is inconsistent with the law and notions of justice.

Mr. Nicholson had a right to seek vacatur of the Award. FINRA arbitrations, including requests for expungement, are conducted pursuant to the FINRA Code of Arbitration Procedure. The FINRA Code of Arbitration Procedure is a written agreement subject to the Federal Arbitration Act (“FAA”). *See, Washington Square Sec., Inc. v. Aune*, 385 F.3d 432, 435 (4th Cir. 2004). Section 9 of the FAA allows parties to an arbitration to seek vacatur of an arbitration award. 9 U.S.C. § 10. There is no exception that states or implies that arbitrations for expungement are exempt from vacatur. Therefore, Mr. Nicholson had the right to seek vacatur of the underlying arbitration Award to which he was a party.

⁶ FINRA does not cite in its Denial Notice that it denied Mr. Nicholson access to its forum because of an allegation that the expungement request at issue “would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives” pursuant to FINRA Rule 13203. CR at 21. Therefore Mr. Nicholson is only addressing the “inappropriate” standard addressed in FINRA Rule 13203 and mentioned in the Denial Notice.

⁷ As FINRA Rules 12203 and 13203 are identical they will herein be referred to as “Rule 13203” for purposes of simplicity.

An arbitration award that is subsequently vacated is rendered invalid and is not binding on anyone. *See, Lindland v. U.S. Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1005 (7th Cir. 2000); *see also, Close v. Motorists Mut. Ins. Co.*, 21 Ohio App. 3d 228, 231, 486 N.E.2d 1275, 1279 (1985) (holding that “[t]he vacation of an arbitration award on procedural grounds leaves the parties as they were at the beginning of the process, and they are each entitled to begin anew”). The arbitration award vacatur process is contemplated and memorialized in the in the FAA (9 U.S.C. § 10), the statutory frameworks of most (if not all) states, and in FINRA’s own rules and guidance.⁸

Here, Mr. Nicholson exercised his right to seek vacatur of the arbitration award that was rendered in FINRA Case No. 17-02982. A District Court Judge granted Mr. Nicholson’s request for vacatur of that Award, which entitled Mr. Nicholson, by law, to begin anew with his expungement request. Mr. Nicholson then rightly sought to refile his expungement request in FINRA’s Forum, where FINRA denied access without any valid basis.

FINRA’s prohibition or limitation to Mr. Nicholson’s access to FINRA’s Forum based solely on the fact that he vacated the arbitration award is inconsistent with the purpose and intent of Rule 13203.⁹ FINRA has, under its rulemaking procedures, adopted Rules and issued guidance on expungement procedure.¹⁰ None of the adopted rules and guidelines state that an application for expungement will be barred or ineligible for arbitration if the claimant obtains an order vacating

⁸ *See*, <https://www.finra.org/arbitration-mediation/decision-award> (FINRA acknowledges on their own website under the section labelled “Challenges to an Arbitration Award”, that “under federal and state laws, there are limited grounds on which a court may hear a party’s appeal on an award. Specifically the law permits a district court to vacate or overturn an arbitration award if it finds that ... the arbitrators exceeded their powers ... [or exhibited a] Manifest Disregard of the Law”).

⁹ The purpose of providing the FINRA Director with this authority under Rule 13203 was to “give the Director the flexibility needed in *emergency* situations” and to “address circumstances that may require immediate resolution, such as security concerns and other unusual but serious situations.” 72 Fed. Reg. 20 at 4580-4601 (2007) (emphasis added). “[T]his authority, which cannot be delegated by the Director...should be limited by application in *only a very narrow range of unusual circumstances.*” *Id.* at 4602. (emphasis added).

¹⁰ *See, e.g.*, FINRA Rules 2080 and 13805; *see also*, <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

the original arbitration award. On the contrary, FINRA specifically holds out to the public that vacatur of its awards are valid. The creation of such a rule by FINRA would effectively render any vacatur order useless, usurping the authority of a court of competent jurisdiction and bypassing the rulemaking procedures adopted by FINRA and codified in FINRA Rule 0110 that requires public notice and SEC approval for any new rules or rule changes.¹¹

Assuming, for the sake of argument, that FINRA has the authority to make and implement such a rule, the *de facto* nature of it violates fundamental due process standards. In 1971, the U.S. Supreme Court heard a case involving a Wisconsin statute that allowed “designated persons” to post notices forbidding the sale or gift of liquor to persons who, because of excessive drinking, failed to provide for him or his family or threatened the peace of the community.¹² In deeming the statute unconstitutional, the Court stated that:

It would be naive not to recognize that such ‘posting’ or characterization of an individual will expose him to public embarrassment and ridicule, and it is our opinion that procedural due process requires that before one acting pursuant to State statute can make such a quasi-judicial determination, the individual involved must be given notice of the intent to post and an opportunity to present his side of the matter.¹³

Since 1971, federal courts have upheld that “while a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”¹⁴ In 1994, the 2nd Circuit Court of Appeals held that New York State’s maintenance of a Central Register that identifies individuals accused of child abuse or neglect, and

¹¹ See, FINRA Rulemaking Process <https://www.finra.org/rules-guidance/rulemaking-process>.

¹² *Wisconsin v. Constantineau*, 400 U.S. 433, 434 (U.S. 1971).

¹³ *Id.* at 436.

¹⁴ See, e.g., *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 2707, 33 L. Ed. 2d 548 (1972).

its communication of the names of those on the list to potential employers implicated a protectable liberty interest under the Fourteenth Amendment.¹⁵

While the constitutionality of FINRA's publication of customer disputes and other disclosures is not an issue before the Commission, having publicly available disclosures that broadcast allegations of securities practice violations are equated to being a con artist, an unscrupulous financial professional, or a disreputable person. Mr. Nicholson's disclosures call into question his good name, reputation, honor, and integrity. Further, FINRA Rule 3110 requires member firms to review and consider an investment advisor's CRD when making hiring, retention, and advancement decisions.¹⁶ The disclosures have a tangible effect on Mr. Nicholson's pursuit of his chosen profession. Mr. Nicholson has the right to an evidentiary hearing to determine whether his disclosures should be expunged¹⁷; a right to which FINRA has denied Mr. Nicholson access in violation of the Exchange Act.

B. FINRA's prohibition of Mr. Nicholson's request to be heard in the FINRA Forum is an inconsistent application of FINRA Rule 13203.

FINRA's denial of Mr. Nicholson's access to its forum based solely on the fact that he successfully obtained a court order vacating that award is an inconsistent, arbitrary, and inappropriate application of FINRA Rule 13203 and is beyond its authority under the Exchange Act. A cursory search provides numerous cases where a party to a FINRA arbitration was denied its requested relief, sought and received vacatur, following which FINRA allowed the claims to be refiled in FINRA's arbitration forum and proceeded to the merits of the case.

¹⁵ *Valmonte v. Bane*, 18 F.3d 992, 994 (2d Cir. 1994).

¹⁶ *See, e.g.*, FINRA Rule 3110(e).

¹⁷ *See*, FINRA Rules 13805 and 2080.

For example, in *Ling Yung Wu v. J.P. Morgan Securities, LLC*, FINRA Case No. 18-02825, Claimant Wu sought expungement of a customer dispute disclosure from her CRD record in FINRA's arbitration forum. *See attached Exhibit 1*. After a hearing on the merits, an award was issued denying Wu's request for expungement. *Id.* Wu subsequently filed a motion to vacate the award, which was granted. *Id.* Wu then refiled her claim in FINRA's arbitration forum, and FINRA allowed the expungement request to proceed to another hearing on the merits when Wu's expungement request was granted by a different arbitration panel. *Id.* FINRA did not deny Wu access to its arbitration forum. Wu has since successfully expunged that customer dispute disclosure from her record. Mr. Nicholson's case is identical to the case in *Wu*. The *Wu* case is not an isolated incidence of FINRA allowing vacated awards to proceed back through FINRA's arbitration forum. *See, e.g., attached Exhibits 2, 3, and 4*. Clearly, FINRA allows parties to its arbitration forum to refile their claims after successfully obtaining vacatur relief, including requests for expungement relief. FINRA has wrongfully singled out Mr. Nicholson and prohibited him access to a fundamentally important service that is central to its function as an SRO.

CONCLUSION

The Commission is required to review an action of an SRO if the action is final, prohibits or limits a person's access to services offered to any person by the SRO, and an application by an aggrieved party is timely filed. Mr. Nicholson is an Associated Person, who is not only provided access to the service of the FINRA arbitration forum but is required to file all claims within the forum pursuant to FINRA Rule 13200. FINRA's decision to deny Mr. Nicholson access to its arbitration forum is a final action by FINRA, which prohibits Mr. Nicholson's access to the service of FINRA arbitration, indeed, limits his access to request any relief at all. Mr. Nicholson's application for review was filed with the Commission within 30 days of receiving the Denial

Notice from FINRA. Therefore, Mr. Nicholson respectfully requests an order allowing Mr. Nicholson to bring his expungement claim through FINRA's arbitration forum.

Dated: November 4, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Bessette", is written over a horizontal line. The signature is stylized and cursive.

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CERTIFICATE OF SERVICE

I, James Bellamy, certify that on November 4, 2021, I caused a copy of the foregoing Opening Brief in Support of the Application for Review with attached Exhibits 1-4 in the matter of the Application for Review of Shaun Perry Nicholson., Administrative Proceeding File No. 3-20529 to be filed through the SEC's eFAP system and served by electronic mail on:

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

/s/James Bellamy
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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
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SHAUN PERRY NICHOLSON

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MR. NICHOLSON'S INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	A. Wu Petition to Vacate B. Wu Order to Vacate C. Wu Award
2	Millman Award
3	Parker Award
4	Valenzuela Award

EXHIBIT 1

A. Wu Petition to Vacate

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

LING YUNG WU,

Petitioner,

- against -

J.P. MORGAN SECURITIES LLC,

Respondent.

Index No.:

**PETITION TO VACATE
 ARBITRATION AWARD**

Petitioner Ling Yung Wu, by and through her attorneys Satterlee Stephens LLP, for her petition to vacate an arbitration award pursuant to Article 75 of the New York Civil Practice Law and Rules (“CPLR”) and section 10(a)(4) of the Federal Arbitration Act (“FAA”), respectfully alleges as follows:

PRELIMINARY STATEMENT

This Article 75 proceeding seeks an order, pursuant to NY CPLR 7511 and FAA § 10(a)(4), vacating a January 11, 2019, FINRA arbitration award (the “Award”) on the grounds that the arbitrator acted without authority because she was not appointed pursuant to FINRA’s own rules for the appointment of an arbitrator. Petitioner seeks to vacate the Award so that a new FINRA hearing can be conducted before an arbitrator properly selected in accordance with the FINRA Rules to determine whether expungement is appropriate.

PARTIES

1. Petitioner Ling Yung Wu is an individual and a Supervisory Manager of financial advisors at Respondent J.P. Morgan Securities LLC (“JPMS”) and has been a JPMS employee since 2010.

2. Respondent J.P. Morgan Securities LLC is a limited liability company formed under the laws of the State of Delaware and is registered as a foreign limited liability company with the NYS Department of State.

STATEMENT OF FACTS¹

A. The FINRA Arbitration and Award

1. Petitioner Ling Yung Wu commenced a FINRA arbitration to expunge a customer complaint made in July 2014 from her Central Registration Depository (“CRD”) system record, pursuant to FINRA Rules 2080 and 12805, on the grounds that the customer claim was erroneous, false and otherwise without merit (Wu Aff., ¶ 2).

2. Since first receiving her FINRA license in 2000, Petitioner has never been subject to discipline or complaints of any type -- other than the customer complaint which was the subject of the expungement proceeding (Wu Aff., ¶ 3).

3. As an Associated Person, registered with FINRA, Petitioner agreed to arbitrate customer and employment disputes under the auspices of FINRA through the arbitration clause which is incorporated in the Form U4 - Uniform Application for Securities Industry Registration or Transfer which she signed in connection with her employment at JPMS ((Wu Aff., ¶ 2, footnote 1).

4. CRD is the central licensing and registration system for the United States securities industry. Registered securities firms submit information in CRD in response to questions on the uniform registration forms and these forms collect administrative, disciplinary and other information about registered personnel, including customer complaints. CRD

¹ The facts relevant to the Petition are set forth in the Affidavit of Thomas J. Cahill (Counsel for Petitioner Ling Yung Wu), sworn to March 13, 2019, and the exhibits thereto (“Cahill Aff.”) and the Affidavit of Petitioner Ling Yung Wu, sworn to February 28, 2019, and the exhibits thereto (“Wu Aff.”).

information is made publicly available through FINRA BrokerCheck (Cahill Aff., ¶ 1, footnote 1).

5. Associated persons, such as Ms. Wu, may seek to have customer dispute information removed from their CRD (and thereby, from BrokerCheck) pursuant to FINRA Rule 2080 because the claim or allegation is factually impossible, clearly erroneous or false, or if the associated person was not involved in the alleged investment-related sales practice violation (Cahill Aff., ¶ 1, footnote 1).

6. An arbitration hearing was held on January 9, 2019, and the Award was issued on January 11, 2019. A copy of the Award is attached as Exhibit A.

B. The Customer Complaint

7. The complaint at issue concerns a July 9, 2014 email the customer sent to JPMorgan Chase & Co. Chief Executive Officer Jamie Dimon to complain about his investment into an annuity and certain mutual funds (Wu Aff., ¶ 4).

8. The customer complained that recommendations made by a JPMS financial advisor had been, according to the customer, inappropriate because the annuity investment was allegedly unsuitable for him and the funds were speculative in nature and charged “back-end” fees (Wu Aff., ¶ 4).

9. The customer’s email noted that he was a 67 year old college professor of English and that his daughter (who is a FINRA registered principal) was assisting him with his complaint to JPMS (Wu Aff., ¶ 5).

10. The July 9, 2014 email noted that Petitioner was the financial advisor’s supervisor but complained that when the customer and his daughter spoke to Petitioner the day earlier (on July 8, 2014), she (i) wanted to have an investigation conducted rather than reviewing the

account over the phone and (ii) would not agree at that time to waive the fees associated with a proposed liquidation of the investments (Wu Aff., ¶ 6).

11. By letter dated October 21, 2014, JPMS Compliance reported to the customer regarding JPMS's investigation of the complaint and explained that JPMS would not be reimbursing the customer for any fees or surrender penalties that were incurred in connection with the investments because the financial advisor had properly handled the transactions in question and had made the necessary disclosures to the customer (Wu Aff., ¶ 7).

12. The October 21, 2014 JPMS letter also explained that there was no basis for any claim relating to Petitioner, and that JPMS found that she acted appropriately and followed firm procedures concerning the supervision of the financial advisor as well as forwarding the concerns that the customer expressed in a timely manner to the appropriate department within JPMS to address (Wu Aff., ¶ 8).

13. If there had been an issue with respect to the supervision of the financial advisor with respect to the annuity investment itself, supervisory responsibility rested with the JPMS group assigned to oversee annuity investments, and not with Petitioner (Wu Aff., ¶ 8, footnote 2).

14. As JPMS found in its investigation, Petitioner acted appropriately and followed JPMS procedures, and there is no basis to find that she failed to act in accordance with any of her responsibilities (Wu Aff., ¶ 9).

15. While the customer complaint should be expunged from Petitioner's CRD record under governing FINRA standards, Petitioner is not asking that this Court review the award itself, but is simply seeking vacatur of the award on the basis of the improper appointment of the

arbitrator so that she can seek a FINRA hearing with an arbitrator properly appointed in accord with the FINRA Rules (Wu Aff., ¶ 10).

C. The Improper Selection of the Arbitrator under the FINRA Rules

16. The FINRA Rules explicitly address the selection of arbitrators in connection with a FINRA arbitration. Under the FINRA Rules, the parties play a critical role in the selection of arbitrators (Cahill Aff., ¶ 3).

17. Under the FINRA Rules, a party to an arbitration may strike proposed arbitrators from the selection process and stricken arbitrators are not to be appointed as an arbitrator for a FINRA arbitration (Cahill Aff., ¶ 3).

18. FINRA is to use the ranking sheets of non-stricken proposed arbitrators submitted by the parties to select an arbitrator (Cahill Aff., ¶ 3).

19. With respect to FINRA's arbitrator selection system, FINRA Rule 13400 explains that:

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators from the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

(Cahill Aff., ¶ 4, Ex. A).

20. FINRA Rule 13401(c) explains that when a claim does not request money damages (such as an expungement hearing), the parties may agree to a single arbitrator (Cahill Aff., ¶ 5, Ex. A).

21. FINRA Rule 13403 explains that FINRA generates a list of ten possible arbitrators from which each arbitrator is to be selected and sends those lists to the parties (Cahill Aff., ¶ 6, Ex. A).

22. FINRA Rule 13404 provides that a party may strike up to four of the ten arbitrators from each list for any reason by crossing through the names of the arbitrators and that each party is to rank all remaining arbitrators on the lists in order of preference, with a “1” indicating the party’s first choice, a “2” indicating the party’s second choice, and so on. The Rule further explains that the ranked lists are to be submitted via FINRA’s “Party Portal” 20 days after the date upon which the Director sends the lists to the parties (Cahill Aff., ¶ 7, Ex. A).

23. FINRA Rule 13405 explains that FINRA prepares a combined ranked list of arbitrators based on the parties’ numerical rankings, as follows:

- The Director will add the rankings of all claimants together, and the rankings of all respondents together, to produce separate combined ranked lists for the claimants and the respondents.
- The Director will then add the combined rankings of claimants and the respondents together, to produce a single combined ranking number for each arbitrator, excluding all arbitrators stricken by a party.
- The Director will create separate combined ranked lists for each arbitrator classification in cases with both public and non-public arbitrators.

(Cahill Aff., ¶ 8, Ex. A (emphasis added)).

24. FINRA Rule 13406 provides that the Director is to appoint the highest-ranked available arbitrator from the combined list (Cahill Aff., ¶ 9, Ex. A).

25. Pursuant to the FINRA Rules set forth above, on October 2, 2018, FINRA forwarded proposed lists of arbitrators to the parties. The letter noted that the parties’ ranking lists were due on or before October 24, 2018 (Cahill Aff., ¶ 10, Ex. B).

26. In line with the FINRA Rules, the FINRA October 2 letter explicitly noted the parties’ right to strike possible arbitrators and summarized the process described above for the selection of arbitrators (Cahill Aff., ¶ 11, Ex. B).

27. By a letter dated October 22, 2018, counsel for Petitioner notified FINRA that the parties (i.e., Petitioner and Respondent JPMS) had agreed to the use of a single arbitrator (Cahill Aff., ¶ 12, Ex. C).

28. On October 24, 2018, Petitioner timely filed her arbitrator ranking form (Cahill Aff., ¶ 13, Ex. D). In line with her rights under the FINRA Rules, in her ranking form, Petitioner struck Ms. Lorrie Whitfield as a possible arbitrator for the hearing to be scheduled in this arbitration (id., ¶ 14, Ex. D).

29. Ms. Whitfield was stricken by Petitioner based upon Ms. Whitfield's prior record because FINRA records showed that Ms. Whitfield had denied expungement in each of the three prior expungement matters before her as an arbitrator and Petitioner opted to seek an arbitrator without a prior record of rejecting expungement requests (Cahill Aff., ¶ 14, footnote 4).

30. Notwithstanding Petitioner's strike of Ms. Whitfield, Ms. Whitfield was appointed as the arbitrator for the matter (Cahill Aff., ¶ 15, Ex. E).

31. Petitioner was advised of Ms. Whitfield's appointment by an October 24, 2018 correspondence (Cahill Aff., ¶ 15, Ex. E).

32. As Petitioner had no reason to suspect that FINRA would appoint a stricken arbitrator in contravention of its own rules, Petitioner's counsel did not manually re-check the arbitrator ranking form previously submitted by Petitioner to look for possible errors on FINRA's part (Cahill Aff., ¶ 15).

33. FINRA has acknowledged in writing that the appointment of Ms. Whitfield was in error (Cahill Aff., ¶¶ 16, 19, Ex. F).

34. Counsel for Petitioner did not object to arbitrator Whitfield at the pre-hearing conference or prior to the arbitration because, as noted previously, counsel assumed that any

proposed arbitrator stricken by Petitioner through the arbitration selection process was not somehow erroneously appointed for the arbitration and accordingly the appointment of the stricken arbitrator was not apparent to Petitioner (Cahill Aff., ¶ 17).

35. Following the hearing and the issuance of the January 11, 2019 Award (which denied expungement without any explanation), counsel for Petitioner noticed that arbitrator Whitfield had previously been stricken and should not have been appointed as the arbitrator (Cahill Aff., ¶ 18).

36. By letter dated January 25, 2019, FINRA acknowledged that the arbitrator was appointed in error and that FINRA should not have appointed the arbitrator in view of Petitioner's timely strike of that arbitrator (Cahill Aff., ¶ 19, Ex. F).

37. FINRA advised that it could not unilaterally remedy the error at that juncture and that Petitioner would need to obtain a court order to vacate the Award before a new hearing could be held with an arbitrator selected in accordance with the FINRA Rules (Cahill Aff., ¶ 19, Ex. F).

38. Specifically, FINRA's letter provides:

Arbitrator Lorrie Whitfield was appointed to this case in error on about October 24, 2018. Please be advised that FINRA and staff have no authority to overturn the arbitrator's determination. If Claimant wishes to challenge the award, [s]he must do so in a court of competent jurisdiction pursuant to either state or federal law. Please note that there are strict time limitations for pursuing this course of action; and that FINRA will abide by any court order.

(Cahill Aff., ¶ 19, Ex. F).

FIRST CAUSE OF ACTION: VACATUR OF ARBITRATION AWARD

39. Petitioner repeats and realleges paragraphs 1 through 38, as if fully set forth herein.

40. Petitioner was a party to the arbitration and was prejudiced by FINRA's error in appointing an arbitrator who had been stricken by Petitioner, in contravention of FINRA's Rules.

41. Improper appointment of an arbitrator is grounds to vacate an arbitration award pursuant to FAA § 10(a)(4).

42. Petitioner has brought this application within 90 days of the delivery of the Award on January 11, 2019.

43. By reason of the foregoing, Petitioner is entitled to an order vacating the Award pursuant to CPLR 7511(b) and FAA § 10(a)(4), so that a new FINRA hearing can be conducted with an arbitrator properly selected in accordance with the FINRA Rules to determine whether the customer complaint at issue should be stricken from Petitioner's CRD.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Ling Yung Wu respectfully requests that this Court enter an order vacating the January 11, 2019, arbitration award pursuant to NY CPLR 7511 and FAA § 10(a)(4) so that a new FINRA hearing can be conducted with an arbitrator properly selected in accordance with the FINRA Rules, and awarding such other and further relief as this Court deems proper.

Dated: New York, New York
March 13, 2019

SATTERLEE STEPHENS LLP

By: Thomas Cahill
Thomas J. Cahill
Abigail Snow
230 Park Avenue, 11th Floor
New York, New York 10169
(212) 818-9200
Attorneys for Petitioner Ling Yung Wu

TO: J.P. Morgan Securities LLC

B. Wu Order to Vacate

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Engoron Justice

PART 37
651530-19
INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 1

Wu, Ling Yung

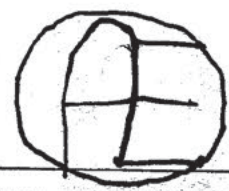
JP MORGAN Securities

The following papers, numbered 1 to _____, were read on this motion to for vacate arbitration award
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted without opposition. The arbitration award dated January 11, 2019 by FINRA arbitrator Lorrie E. Whitfield is hereby vacated.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/16/19



_____, J.S.C.
HON. ARTHUR F. ENGORON

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

C. Wu Award

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Ling Yung Wu

Case Number: 18-02825

vs.

Respondent
J.P. Morgan Securities, LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Ling Yung Wu: Thomas Cahill, Esq., Satterlee Stephens LLP, New York, New York.

For Respondent J.P. Morgan Securities, LLC: Scott R. Koch, Esq., JPMorgan Chase Legal Department, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: August 10, 2018.
Amended Statement of Claim filed on or about: June 3, 2019.
Claimant signed the Submission Agreement: August 8, 2018.

Statement of Answer filed by Respondent on or about: October 1, 2018
Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: October 11, 2019.
Respondent signed the Submission Agreement: October 1, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer and Amended Statement of Answer, Respondent denied any wrongdoing.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of occurrence #1717500, and such other and further relief as the Panel finds just and proper.

In the Statement of Answer and Amended Statement of Answer, Respondent did not oppose Claimant's expungement request.

OS Received 11/04/2021

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On January 10, 2019, an award was issued in the above referenced matter. Claimant subsequently filed a Motion to Vacate the Award. By Order dated April 24, 2019, the Supreme Court of the State of New York, New York County, granted Claimant's Motion to Vacate.

By correspondence dated June 12, 2019, the parties requested that this case proceed with three arbitrators pursuant to FINRA Rule 12401(c) of the Code of Arbitration Procedure.

On October 8, 2019, Claimant notified the customer in the underlying complaint of her request for expungement and of his right to participate in the expungement hearing and also provided the customer with a copy of the Statement of Claim.

The Panel conducted a recorded in-person hearing on October 28, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customer in the underlying complaint did not participate in the expungement hearing and did not contest Claimant's request for expungement.

The Panel finds that the customer does not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

The Panel reviewed the BrokerCheck® Report for Claimant.

The Panel noted that Claimant did not previously file a claim requesting expungement of occurrence number 1717500.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's testimony, the customer transaction form, internal emails indicating that Claimant followed supervisory procedures, and Respondent's Compliance Department's response to the customer's complaint.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

1. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the Central Registration Depository ("CRD"), for Claimant Ling Yung Wu (CRD# 4211526), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ling Yung Wu 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 Panel has made the following Rule 2080 affirmative findings of fact:

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; and the claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

The customer's allegation is clearly erroneous in that the documentary record and testimony established that Claimant acted promptly and in compliance with her firm's supervisory procedures.

The Claimant had no involvement in the underlying transactions at issue nor was she the relevant sales supervisor.

The claim of inadequate supervision is refuted by the documentary evidence and testimony and the Claimant was not responsible for sales supervision.

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

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,575.00
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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, Respondent J.P. Morgan Securities, LLC is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with the Panel @ 1,125.00/session	= \$1,125.00
Pre-hearing conference: August 29, 2019 1 session	

One (1) hearing session on expungement request with the Panel	
@ \$1,125.00/session	= \$1,125.00
Hearing Date: October 28, 2019 1 session	

Total Hearing Session Fees	= \$2,250.00
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The Panel has assessed the hearing session fees of \$2,250.00 to Claimant.

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

ARBITRATION PANEL

Karimu F. Hill-Harvey	-	Public Arbitrator, Presiding Chairperson
Dan Brecher	-	Public Arbitrator
Norman Feit	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Karimu F. Hill-Harvey

Karimu F. Hill-Harvey
Public Arbitrator, Presiding Chairperson

11/13/2019

Signature Date

Dan Brecher

Dan Brecher
Public Arbitrator

11/12/2019

Signature Date

Norman Feit

Norman Feit
Non-Public Arbitrator

11/12/2019

Signature Date

November 13, 2019

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

EXHIBIT 2

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Mary Millman

Case Number: 17-00043

vs.

Respondents
Ankit Sahu
UBS Financial Services Inc.

Hearing Site: San Francisco, California

Cross-Claimant
Ankit Sahu

vs.

Cross-Respondent
UBS Financial Services Inc.

Nature of the Dispute: Customer vs. Member and Associated Person

Associated Person vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

Claimant Mary Millman (“Claimant”) appeared pro se.

For Respondent/Cross-Claimant Ankit Sahu (“Sahu”) and Respondent/Cross-Respondent UBS Financial Services Inc. (“UBS”): Philip A. McLeod, Esq., Keesal, Young & Logan, San Francisco, California.

Hereinafter, Sahu and UBS are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed by Claimant on or about: January 3, 2017.

First Amended Statement of Claim filed by Claimant on or about: August 14, 2017.

Claimant signed the Submission Agreement: January 3, 2017.

Statement of Answer to Claimant’s Statement of Claim filed by UBS on or about: May 2, 2017.

Statement of Answer to Claimant's Statement of Claim filed by Sahu on or about: May 2, 2017.

Statement of Answer to Claimant's First Amended Statement of Claim filed by UBS on or about: September 13, 2017.

Statement of Answer to Claimant's First Amended Statement of Claim filed by Sahu on or about: September 13, 2017.

Cross-Claim against UBS filed by Sahu on or about: May 2, 2017.

Statement of Answer to Sahu's Cross-Claim filed by UBS on or about: May 22, 2017.

UBS signed the Submission Agreement: January 11, 2017.

Sahu signed the Submission Agreement: May 2, 2017.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; unsuitability; fraud; breach of fiduciary duty; breach of contract; failure to supervise/control person liability; respondeat superior; California Civil Code Section 3372; and California Welfare & Institutions Code. The causes of action relate to a real estate loan on a Mississippi property ("Mississippi Investment") and Sahu's alleged mismanagement of Claimant's brokerage account, including investments in unspecified securities while employed by UBS.

Unless specifically admitted in the Statement of Answer to Claimant's Statement of Claim, UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer to Claimant's Statement of Claim, Sahu denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the First Amended Statement of Claim, Claimant added the following causes of action: unauthorized trading; and California Civil Code Section 3345. Claimant also added additional argument regarding the California Welfare & Institutions Code cause of action and updated her relief request to include treble damages under California Civil Code Section 3345.

Unless specifically admitted in the Statement of Answer to Claimant's First Amended Statement of Claim, UBS denied the allegations made in the First Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer to Claimant's First Amended Statement of Claim, Sahu denied the allegations made in the First Amended Statement of Claim and asserted various affirmative defenses.

In the Cross-Claim, Sahu asserted a claim for indemnification against UBS with respect to the claims regarding the Mississippi Investment.

Unless specifically admitted in the Statement of Answer to Sahu's Cross-Claim, UBS denied the allegations made in the Cross-Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and the First Amended Statement of Claim, Claimant requested:

1. Compensatory damages as follows:
 - a. Unpaid principal on the Mississippi Investment in the amount of \$9,000.00;
 - b. Unpaid interest on the Mississippi Investment note in the amount of \$20,000.00;
 - c. Liquidated damages on the Mississippi Investment in the amount of \$112,500.00;
 - d. Well managed damages for the Mississippi Investment in the amount of \$103,211.00;
 - e. Well managed portfolio profits on all of the non-Mississippi Investments that would have been earned had the investments been properly invested in the amount of \$172,427.00;
2. Treble damages under California Civil Code Section 3345;
3. Treble damages under California Welfare & Institutions Code in the amount of \$1,251,414.00;
4. Attorneys' fees under California Welfare & Institutions Code Section 15610.30;
5. Punitive or exemplary damages as may be awarded;
6. Pre and post award interest;
7. Costs of this arbitration; and
8. Such other and further relief as is proper and just.

In the Statement of Answer to Claimant's Statement of Claim, UBS requested:

1. Claimant take nothing by her claim and that this matter be dismissed in its entirety with prejudice;
2. Costs; and
3. Other such relief as the Arbitrators deem just and equitable.

In the Statement of Answer to Claimant's Statement of Claim, Sahu did not set forth a specific request for relief.

In the Statement of Answer to Claimant's First Amended Statement of Claim, UBS requested the same relief as set forth in its Statement of Answer to the Statement of Claim.

In the Statement of Answer to Claimant's First Amended Statement of Claim, Sahu did not set forth a specific request for relief.

In the Cross-Claim, Sahu requested:

1. Claimant take nothing by reason of her Statement of Claim;
2. UBS be ordered to indemnify Sahu for all legal fees and costs incurred with this matter;
3. In the event that liability is attributed to Sahu, UBS be ordered to indemnify him for any award paid to Claimant; and

4. Such further relief that the Arbitrators deem appropriate.

In the Statement of Answer to Sahu's Cross-Claim, UBS requested:

1. Sahu take nothing by his Cross-Claim and that the Cross-Claim be dismissed in its entirety, with prejudice;
2. Sahu be taxed with the costs of this arbitration, including the Arbitrators' fees and expenses; and
3. The Arbitrators grant UBS such other relief as it deems just and equitable.

At the close of the hearing, Claimant requested an award of \$105,524.03 in fees and costs incurred from March 18, 2015 through September 9, 2019 in addition to the previously requested \$103,211.00 in damages for the Mississippi Investment loan and \$116,552.46 in damages for mismanagement of Claimant's investment account, instead of \$172,427.00 as requested in Claimant's First Amended Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

In July 2018, a FINRA arbitration panel issued an award in this matter. In September 2018, Claimant filed a petition to vacate the award in court. On December 19, 2018, the court granted the petition to vacate and ordered the case to be heard by a new FINRA panel ("Panel").

On January 2, 2019, Sahu filed a Pre-Hearing Brief and asserted a claim seeking expungement of this customer dispute, Occurrence Number 1891879 from registration records maintained by the Central Registration Depository ("CRD").

On May 10, 2019, Respondents filed a Joint Stipulation to Dismiss Sahu's Cross-Claim against UBS.

On September 11, 2019, Claimant's counsel withdrew from representation. Thereafter, Claimant proceeded pro se.

At the evidentiary hearing in December 2019, Claimant stated on the record that, although she had no fairness concerns, her "back is against the wall" because she could not find an attorney willing to represent her and she did not have access to certain documents produced to her attorney during discovery. The Panel offered to postpone the hearing for up to six months to allow time for Claimant to review documents and obtain an attorney. Claimant declined the offer and elected to proceed with the hearing. The Panel noted that Claimant is an attorney admitted to practice law in the State of California and during the evidentiary hearing, she stated that she had conducted jury trials in the past.

On December 23, 2019, the Panel ordered an additional hearing to be held on Sahu's request for expungement, which was scheduled for January 29, 2020. On January 28, 2020, Sahu withdrew the request for expungement. Accordingly, the Panel did not rule on Sahu's request for expungement.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

The Panel made the following findings:

As to the claim of mismanagement of Claimant's investment account, Claimant failed to satisfy her burden of proof of negligence, unsuitability, fraud, breach of fiduciary duty, breach of contract, and failure to supervise. Any transactions in Claimant's investment account that were not specifically authorized in advance by Claimant were ratified and confirmed by her receipt of statements and confirmations without objecting to the transactions described therein. Claimant's investment account was well-managed and resulted in profit of \$140,405.00 on an investment of \$747,715.00 over the period from June 2011 to April 2016, representing an internal rate of return on invested funds of 6.8%.

Claimant also claimed damages arising out of a January 4, 2013 loan made by Claimant that has not been repaid. Sahu contacted Claimant regarding an opportunity to derive income from a short term (90 days) loan with respect to the Mississippi Investment. Claimant authorized a wire transfer of \$170,550.00 from her credit line account with UBS to the Secretary of State of Mississippi to pay taxes on the Mississippi Investment and Claimant expected that the principal amount would be repaid plus \$20,000.00 in interest in 90 days. The loan was a private transaction and was not carried as an asset of Claimant's investment account for management by Respondents.

The expected payment in early April 2013 was not made. Claimant did not advise anyone at UBS of the loan or the payment default. In fact, in a telephone call with Ms. D of the UBS compliance department on April 15, 2013, Claimant did not say anything about the loan, which was then in default. UBS had no involvement with the Mississippi loan and could not identify any communications between Sahu and Claimant regarding the loan in UBS' internal email and telephone monitoring systems.

Respondents are not obligors on the Mississippi loan. When Claimant's loan came to the attention of UBS management in spring 2016, Sahu's employment with UBS was terminated. At which time, Sahu had paid Claimant \$9,000.00, and on, June 9, 2016, as an accommodation, UBS credited \$161,550.00 to Claimant's UBS account; the two payments reimbursed her for the principal amount of the January 4, 2013 loan.

Claimant has sustained significant damages because the Mississippi loan principal and accrued interest have not been paid by the obligors, however, Respondents have reimbursed the principal amount of the loan. Any other

claimed damages, including unpaid interest, so called “well-managed account” damages, and costs and attorneys’ fees are the responsibility of others or Claimant. Despite the fact that Claimant’s age qualifies her for special protection as an elder under California law, Respondents did not engage in financial abuse of Claimant and her claim for elder abuse also fails.

AWARD

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

1. Claimant’s claims are denied in their entirety.
2. The Panel did not rule on Sahu’s request for expungement of this matter from his CRD records.
3. 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	= \$ 2,000.00
Cross-Claim Filing Fee	= \$ 2,000.00

*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, UBS is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

January 29, 2020, cancelled by Respondents = \$1,800.00

Total Last-Minute Cancellation Fees = \$1,800.00

The Panel has assessed the total last-minute cancellation fees to Sahu.

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$1,400.00
Pre-hearing conference: April 26, 2019	1 session
Nine (9) hearing sessions with the Panel @ \$1,400.00/session	= \$12,600.00
Hearing Dates: December 2, 2019	2 sessions
December 3, 2019	2 sessions
December 4, 2019	2 sessions
December 5, 2019	1 session
December 6, 2019	2 sessions

Total Hearing Session Fees = \$14,000.00

The Panel has assessed \$4,666.66 of the hearing session fees to Claimant.
The Panel has assessed \$9,333.33 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Lawrence R. Mills	-	Public Arbitrator, Presiding Chairperson
Isidoro Berkman	-	Public Arbitrator
Ronald Chun	-	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.

Concurring Arbitrators' Signatures

Lawrence R. Mills

Lawrence R. Mills
Public Arbitrator, Presiding Chairperson

02/11/2020

Signature Date

Isidoro Berkman

Isidoro Berkman
Public Arbitrator

02/12/2020

Signature Date

Ronald Chun

Ronald Chun
Public Arbitrator

02/11/2020

Signature Date

February 12, 2020

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

EXHIBIT 3

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Jessica Parker Valentine and Bryan L. Parker,
Individually and as Trustees of the Parker Family
Trust

Case Number: 19-00592

vs.

Respondents

Interactive Brokers LLC and
RBC Capital Markets LLC

Hearing Site: Houston, Texas

Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Jessica Parker Valentine and Bryan L. Parker, Individually and as Trustees of the Parker Family Trust (collectively "Claimants"): Joseph R. Marrs, Esq., Zev Kusin, Esq., and Vaibhavi Parmar, Esq., Marrs Ellis & Hodge LLP, Houston, Texas.

For Respondent Interactive Brokers LLC ("IB"): Carlos E. Provencio, Esq., Interactive Brokers LLC, Washington, District of Columbia.

Respondent RBC Capital Markets LLC ("RBC") was represented in Case Number 13-01876 by John P. Kincade, Esq., Winstead PC, Dallas, Texas.

CASE INFORMATION

Case Number 13-01876

Statement of Claim filed on or about: June 25, 2013.

Amended Statement of Claim filed on or about: January 30, 2014.

Second Amended Statement of Claim filed on or about February 5, 2015.

Claimants signed the Submission Agreement: June 25, 2013.

Statement of Answer filed by IB on or about: September 10, 2013.

Statement of Answer to Amended Statement of Claim filed by IB on or about: March 28, 2014.

IB signed the Submission Agreement: September 6, 2013.

Statement of Answer filed by RBC on or about: October 2, 2013.

Statement of Answer to Amended Statement of Claim filed by RBC on or about: March 27, 2014.

RBC signed the Submission Agreement: July 26, 2013.

Case Number 19-00592

Statement of Answer to Second Amended Statement of Claim filed by IB on or about: July 19, 2019.

CASE SUMMARY

Case Number 13-01876

In the Statement of Claim, Claimants asserted the following causes of action against IB and RBC: deceptive trade practices, breach of fiduciary duty and aiding and abetting another's breach of fiduciary duty, negligence and gross negligence, and Texas Blue Sky Law civil liability. The causes of action relate to Claimants' allegation that IB and RBC supervised the trustee of the trust, to which Claimants are beneficiaries, ("Trust") as the trustee breached his duties to Claimants by using the Trust to speculate in high-risk securities contrary to the Trust's limitations, resulting in a loss of half of the Trust's value.

In the Amended Statement of Claim, Claimants asserted the following causes of action against RBC: breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence and gross negligence, breach of the duty of fair dealing under NASD Rule 2310-2, violations of Texas Securities Act, violation of FINRA Rule 2090/NYSE 405 ("Know Your Customer"), and violation of NASD 3010 and FINRA Supervisory Duties. Claimants asserted the following causes of action against IB: violation of FINRA Rule 2090/NYSE 405 ("Know Your Customer"), churning, violation of FINRA Rule 2111 (Suitability), violation of NASD 3010 and FINRA Supervisory Duties and suitability, aiding and abetting another's breach of fiduciary duty, and negligence and gross negligence. The causes of action relate to Claimants' allegation that IB and RBC actively assisted the trustee in his reckless trading and failed to stop him when they had a duty to protect the beneficiaries' interests. Claimants further alleged that IB and RBC collectively received over \$158,000.00 in commissions by indulging the trustee's unsuitable, speculative trading strategy, which decimated the Trust's corpus.

In the Second Amended Statement of Claim, Claimants asserted the following causes of action solely against IB: aiding and abetting breach of fiduciary duty, negligence and gross negligence (breach of duty of fair dealing), and violation of the Texas Securities Act. The causes of action relate to Claimants' allegation that IB approved and assisted the trustee's reckless trading and failed to stop him when it had a duty to protect the beneficiaries' interests as the listed owners of the Trust account. Claimants further alleged that IB received \$44,807.00 in commissions, fees, and interest.

Unless specifically admitted in IB's Statement of Answer and Statement of Answer to Amended Statement of Claim, IB denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in RBC's Statement of Answer and Statement of Answer to Amended Statement of Claim, RBC denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

Case Number 19-00592

Unless specifically admitted in the Statement of Answer to Second Amended Statement of Claim, IB denied the allegations made in the Second Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Case Number 13-01876

In the Statement of Claim, Claimants requested compensatory damages for the breaches of fiduciary duty, disgorgement of profits and of self-dealing transfers received or caused at the expense of the Trust, equitable disgorgement of any fees and forfeiture of any future compensation, treble and/or exemplary damages, attorneys' fees pursuant to Section 17.50(d) of the Texas Business and Commerce Code and other applicable statutes, pre- and post-judgment interest at the highest lawful rate, costs, and for such other and further relief as the Panel may deem just and proper.

In the Amended Statement of Claim, Claimants requested against RBC: damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account at RBC and the \$18,000.00 loss that the Trust account actually returned; \$18,000.00 in actual damages for RBC's breach of their duties and violation of FINRA rules and guidelines; disgorgement of \$213,000.00 of RBC's commissions and other profits received or caused at the expense of the Trust, equitable disgorgement of any fees RBC took, and forfeiture of any future compensation, and/or exemplary damages. Claimants requested against IB: \$1.4 million representing the actual damages to the Trust, being the total lost equity in the Trust account, without crediting prior speculative gains against losses; damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account at IB and the \$725,000.00 loss that the Trust account actually sustained; \$725,000.00 in actual damages for breach of IB's duties and violation of FINRA rules and guidelines; disgorgement of \$45,000.00 of IB's commissions and other profits received or caused at the expense of the Trust, equitable disgorgement of any fees, and forfeiture of any future compensation; exemplary damages; and/or reasonable and necessary attorneys' fees and costs of arbitration. Claimants further requested against RBC and IB, pre- and post-judgment interest at the highest lawful rate on these amounts, costs of arbitration, and such other and further relief as the Panel may deem just and proper.

In the Second Amended Statement of Claim, Claimants requested damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account and the \$725,779.59 loss that the Trust account actually sustained; \$725,779.59 in actual damages for IB's breach of its duties and violation of FINRA rules and guidelines and Texas law; disgorgement of \$45,807.00 of IB's commissions and other profits received or caused at the expense of the Trust,

equitable disgorgement of any fees IB was paid, and forfeiture of any future compensation; general equitable relief; reasonable attorneys' fees and costs of arbitration, and pre- and post-judgment interest at the highest lawful rate on these amounts, costs, and such other and further relief as the Panel may deem just and proper.

In IB's Statement of Answer and Statement of Answer to Amended Statement of Claim, IB requested that all of Claimants' claims be denied and that IB be awarded reasonable attorneys' fees and costs.

In RBC's Statement of Answer and Statement of Answer to Amended Statement of Claim, RBC requested that Claimants' Statement of Claim be dismissed with prejudice, that Claimants take nothing, that RBC be award its forum fees and arbitration costs, including refund of the member surcharge, that this matter be expunged from an Unnamed Party's registration records maintained by the Central Registration Depository ("CRD"), and all other and further relief to which RBC is entitled. In the Statement of Answer to Amended Statement of Claim, RBC also requested indemnification of costs and fees as provided in the account agreements.

Case Number 19-00592

In the Statement of Answer to Second Amended Statement of Claim, IB requested that all of Claimants' claims be denied and that IB be awarded reasonable attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On April 28, 2015, an award was issued in Case Number 13-01876 by another arbitration panel ("Prior Award"). By court order dated October 23, 2015, the District Court of Harris County, Texas vacated the Prior Award. Accordingly, this matter was reopened under the present case number and a new panel was appointed to rehear this matter.

The Arbitrators made no determination with respect to the claims against RBC or RBC's request for expungement of the Unnamed Party's registration records maintained by the CRD, because Claimants withdrew their claims against RBC and RBC did not pursue its expungement request prior to this matter being reopened.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

1. Claimants' claims are denied in their entirety.
2. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
3. Any and all claims for relief not specifically addressed herein, including exemplary damages and attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,725.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Office of Dispute Resolution previously deferred the Claimants' filing fee of \$1,725.00. Upon conclusion of the matter, the Panel determined to assess the fee.

Member Fees

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

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

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
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Claimants submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

Hearing Session Fees and Assessments

The Panel 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 @ \$450.00/session	= \$	450.00
Pre-hearing Conference: October 7, 2019		1 session
One (1) pre-hearing session with the Panel @ \$1,300.00/session	= \$	1,300.00
Pre-hearing Conference: June 17, 2019		1 session
Seven (7) hearing sessions @ \$1,300.00/session	= \$	9,100.00
Hearing Dates:		
December 16, 2019		2 sessions
December 17, 2019		2 sessions
December 18, 2019		2 sessions
December 19, 2019		1 session
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Total Hearing Session Fees	= \$	10,850.00

The Panel has assessed \$5,425.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$5,425.00 of the hearing session fees to IB.

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

ARBITRATION PANEL

Robert C. Rice	-	Public Arbitrator, Presiding Chairperson
Lynne M. Gomez	-	Public Arbitrator
Stephen Andrew McCarthy	-	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.

Concurring Arbitrators' Signatures

Robert C. Rice

Robert C. Rice
Public Arbitrator, Presiding Chairperson

01/14/2020

Signature Date

Lynne M. Gomez

Lynne M. Gomez
Public Arbitrator

01/14/2020

Signature Date

Stephen Andrew McCarthy

Stephen Andrew McCarthy
Public Arbitrator

01/14/2020

Signature Date

January 14, 2020

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

EXHIBIT 4

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Jose Valenzuela
PFS Investments, Inc.

Case Number: 14-00412

vs.

Respondents

Victoria Smith
Deborah Stubbs
Harold Thomas

Hearing Site: Miami, Florida

Nature of the Dispute: Associated Person and Member vs. Customers

REPRESENTATION OF PARTIES

For Claimants Jose Valenzuela ("Valenzuela") and PFS Investments, Inc. ("PFS"): Mark F. Raymond, Esq., Broad and Cassel, Miami, Florida.

For Respondents Victoria Smith, Deborah Stubbs and Harold Thomas: Frank R. Rodriguez, Esq., Rodriguez Tramont Guerra & Nunez, P.A., Coral Gables, Florida.

CASE INFORMATION

Statement of Claim and Application for Expungement filed on or about: February 10, 2014.

Respondent Valenzuela signed the Submission Agreement: February 10, 2014.

Respondent PFS signed the Submission Agreement: February 10, 2014.

Statement of Answer filed by Respondents on or about: May 13, 2014.

Victoria Smith did not sign the Submission Agreement.

Deborah Stubbs did not sign the Submission Agreement.

Harold Thomas did not sign the Submission Agreement.

CASE SUMMARY

Claimants asserted that reference to FINRA Case No. 12-00188 should not appear on Claimant Valenzuela's Central Registration Depository ("CRD") records because, pursuant to a stipulation of the parties, the Miami-Dade County Circuit Court entered an Order dated January 30, 2014, vacating in its entirety the final Award in Case No. 12-00188 and dismissing all of the claims asserted in that arbitration, with prejudice.

In their Statement of Answer, Respondents disagreed with many of the allegations set forth in the Statement of Claim but did not oppose the relief requested by Claimants.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested expungement of all references to FINRA Case No. 12-00188 from Claimant Valenzuela's registration/regulatory records, including, without limitation, his CRD records.

In their Statement of Answer, Respondents did not specifically delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents did not file with FINRA Dispute Resolution properly executed Submission Agreements but, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded telephonic hearing on September 4, 2014, so the parties could present oral argument/evidence on Claimants' request for expungement on behalf of Claimant Valenzuela. Respondents did not oppose the expungement request and opted not to appear at the hearing.

AWARD

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

1. Claimant Valenzuela's request for expungement is denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 1,500.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Claimant PFS is assessed the following:

Member Surcharge = \$ 1,500.00
Pre-Hearing Processing Fee = \$ 750.00
Hearing Processing Fee = \$ 2,200.00

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 the Arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing conference: August 11, 2014	1 session	
One (1) Hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing Date: September 4, 2014	1 session	
Total Hearing Session Fees	= \$	900.00

The Arbitrator has assessed the total hearing session fee of \$900.00 jointly and severally to Claimants.

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

ARBITRATOR


Steven Gerard Goerke

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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



Steven Gerard Goerke
Sole Public Arbitrator

10-14-2014

Signature Date

10/15/14

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