

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

In the Matter of the Application of

Joseph Sylvester Sturniolo

For Review of Action Taken by

FINRA

Administrative Proceeding No. 3-21503

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

Alan Lawhead
Senior Vice President and
Director – Appellate Group

Megan Rauch
Associate General Counsel

Michael Smith
Associate General Counsel

Ashley Martin
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, D.C. 20006
(202) 728-8863
megan.rauch@finra.org
nac.casefilings@finra.org

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FINRA’S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

In 2020, after obtaining a state court vacatur of a FINRA arbitration award denying expungement of customer dispute information, applicant Joseph Sylvester Sturniolo filed a statement of claim with FINRA Dispute Resolution Services (“DRS”) seeking to expunge the same customer dispute information from FINRA’s Central Registration Depository® (“CRD®”). The Director of DRS (the “Director”) denied Sturniolo access to FINRA’s arbitration forum at that time. Rather than appeal FINRA’s denial of forum to the Commission, Sturniolo filed a state court action against FINRA seeking the same expungement relief. In May 2022, the state court *granted* FINRA’s motion for summary judgment on the merits and dismissed Sturniolo’s complaint. In April 2023, Sturniolo filed another statement of claim in FINRA’s arbitration forum seeking to expunge the same customer dispute information. The Director properly denied Sturniolo access to FINRA’s arbitration forum in accordance with FINRA Rules because the subject matter was inappropriate.

Sturniolo’s 2023 statement of claim constitutes a repeat attempt, in two different forums, to expunge the same customer dispute information. Sturniolo’s forum shopping creates needless

inefficiencies resulting in successive litigation that undermines the finality of court judgments and final FINRA actions. The Director previously considered and rejected Sturniolo's arbitration claim in 2020, and Sturniolo did not appeal the Director's denial to the Commission at the time. Rather than appeal FINRA's final action in 2020, Sturniolo elected to pursue expungement of the same customer dispute information in state court and was denied expungement relief on the merits. When Sturniolo returned to FINRA's arbitration forum in 2023 seeking to expunge the same customer dispute information, the Director properly denied him access because his 2023 statement of claim was a collateral attack on the state court judgment denying expungement of the same customer dispute information and it sought to expunge the same customer dispute information as his 2020 statement of claim.

On appeal, Sturniolo focuses his argument on FINRA's 2020 forum denial. FINRA does not dispute that, pursuant to the reasoning espoused in the Commission's subsequent decision in *Cynthia Marie Couyoumjian*, Sturniolo should have been permitted access to FINRA's arbitration forum in 2020. But Sturniolo did not appeal FINRA's decision to the Commission, and the time to appeal that denial has passed. The *Couyoumjian* opinion does not grant Sturniolo the right to ignore the consequences of a state court judgment or final FINRA action. His argument ignores the inconvenient facts that a state court has denied expungement of the same customer dispute information in a judgment on the merits and that his 2023 arbitration claim sought to expunge the same customer dispute information as his 2020 arbitration claim.

FINRA acted in accordance with its rules, and it applied those rules in a manner consistent with the purposes of the Securities Exchange Act of 1934 (the "Exchange Act"). Accordingly, the Commissions should dismiss Sturniolo's application for review.

I. FACTUAL BACKGROUND

Sturniolo entered the securities industry in 1988, and he currently is associated with a FINRA member firm. R. at 1552, 1548.¹

A. Sturniolo Settles a Customer's Complaint

In July 2002, Sturniolo's customer filed a claim with the NASD Office of Dispute Resolution² against Sturniolo and his former firm, First Allied Securities, Inc. ("First Allied"). R. at 70-86, 1559. The customer alleged that Sturniolo engaged in breach of fiduciary duty, suitability violations, common law fraud, and negligence and sought \$848,000 in compensatory damages. R. at 82-85, 1559. In June 2004, Sturniolo, First Allied, and the customer settled the customer's claims. Under the terms of the settlement, Sturniolo and First Allied agreed to pay the customer \$675,000. R. at 88-89. Sturniolo individually contributed \$25,000 of that amount. R. at 95-96, 1560.

B. An Arbitrator Denies Sturniolo's Claim to Expunge Information Concerning the Customer Settlement

Fourteen years after Sturniolo settled the dispute with his customer, Sturniolo filed a statement of claim with DRS against First Allied seeking to expunge the customer dispute information concerning the customer settlement from CRD. R. 1-96. Sturniolo's statement of claim stated that he sought expungement pursuant to FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) because the underlying allegations that led to the settlement were "clearly erroneous, factually impossible, and false." R. at 6. After conducting a telephonic hearing, in

¹ "R. at ___" refers to the page numbers in the certified record filed by FINRA on June 30, 2023.

² The NASD Office of Dispute Resolution is now DRS.

which the customer did not participate, the arbitrator issued an arbitration award denying Sturniolo's request for expungement in October 2018. R. at 97-99.

C. A State Court Vacates the Arbitrator's Award Denying Expungement

In 2020, Sturniolo filed a Petition to Vacate the arbitrator's award denying expungement in the District Court of Broomfield County, Colorado. R. at 101-08. Like the prior arbitration, Sturniolo named only First Allied as a defendant. R. at 101. In his Petition to Vacate, Sturniolo asserted that First Allied did not oppose his request for expungement.³ R. at 104. Sturniolo thereafter filed an Unopposed Motion for Entry of Order vacating the prior arbitration award, which the District Court of Broomfield County granted in May 2020 (the "Vacatur of the Prior Arbitration Award"). R. at 109-10.

D. FINRA Denies Sturniolo the Use of Its Arbitration Forum for His 2020 Arbitration Claim

In June 2020, Sturniolo filed another arbitration claim with DRS against First Allied seeking to expunge the same customer dispute information concerning the customer settlement from CRD ("2020 arbitration claim"). R. 111-21. Sturniolo attached a copy of the Vacatur of the Prior Arbitration Award. On June 8, 2020, FINRA declined to accept Sturniolo's 2020 arbitration claim. R. at 123. In its denial of forum letter, FINRA wrote: "FINRA has determined that the claims you have alleged in your statement of claim are not eligible for arbitration. Therefore, pursuant to the Customer Code 12203(a) or the Industry Code Rule 13203(a), we decline to accept your claim." R. at 123.

³ FINRA was not notified about the Petition to Vacate or given an opportunity to participate. R. at 175.

E. A State Court Denies Sturniolo’s Claim for Expungement

Rather than appeal FINRA’s denial of forum to the Commission, Sturniolo filed a Complaint for Expungement and Injunctive Relief that named FINRA as defendant in the District Court of Denver County, Colorado. R. at 125-66. After engaging in extensive discovery, FINRA and Sturniolo filed cross motions for summary judgment. On May 7, 2022, the court granted FINRA’s motion for summary judgment on the merits. R. at 1497-1520. The court found three independent grounds for granting FINRA’s motion for summary judgment: that Sturniolo has not stated a cognizable claim under Colorado law, that the prior arbitration award on the merits denying Sturniolo’s expungement request precludes his claim in state court, and that laches bars his claim. R. at 1502. The court expressly stated that its order does not undo or vacate the Vacatur of the Prior Arbitration Award. R. at 1508.

F. FINRA Denies Sturniolo the Use of Its Arbitration Forum for His 2023 Arbitration Claim

On April 28, 2023, Sturniolo filed another arbitration claim with DRS against First Allied seeking to expunge the same customer dispute information concerning the customer settlement from CRD (“2023 arbitration claim”). R. at 1521-26. After initially accepting Sturniolo’s claim once he provided a copy of the Vacatur of the Prior Arbitration Award (but failed to disclose the order from the District Court of Denver County denying Sturniolo’s requested expungement of the same customer dispute information), the Director denied Sturniolo access to FINRA’s arbitration forum. R. at 1529-37. In a letter explaining his decision, after a full recitation of the relevant facts, including Sturniolo’s three arbitration claims filed in FINRA’s forum and the two separate actions in Colorado state court, the Director explained: “Given the purposes of FINRA and the intent of the FINRA Arbitration Code, the subject matter of the dispute is inappropriate.” R. at 1537.

On June 21, 2023, Sturniolo filed an application for review with the Commission. R. at 1539.

II. ARGUMENT

The Commission should dismiss Sturniolo’s application for review because the grounds on which FINRA based its decision exist in fact, FINRA’s decision was in accordance with FINRA’s rules, and FINRA applied those rules in a manner consistent with the purposes of the Exchange Act. *See* 15 U.S.C. § 78s(f).⁴ As explained below, FINRA’s rules authorize the Director to deny the forum for any statement of claim whose subject matter is inappropriate for arbitration. Sturniolo’s 2023 statement of claim was inappropriate for arbitration because it was a collateral attack on a state court judgment denying expungement of the same customer dispute information and it sought to expunge the same customer dispute information as his 2020 arbitration claim.

A. FINRA Properly Prohibited Sturniolo Access to Its Arbitration Forum

1. The Director May Deny the Forum for Inappropriate Arbitration Claims

FINRA may decline to accept for arbitration any statement of claim whose subject matter is not appropriate for FINRA’s forum. FINRA Rules 12203(a) and 13203(a) provide the Director with discretion to deny the forum for any claim that involves “inappropriate” subject matter “given the purposes of FINRA and the intent of the Code [of Arbitration Procedure].”⁵

⁴ Section 19(f) requires the Commission to set aside FINRA’s action if it imposes an undue burden on competition. 15 U.S.C. § 78s(f). The parties do not argue, and the record does not reflect, that FINRA’s action imposes such a burden here.

⁵ Sturniolo contends that the Director’s authority under FINRA Rules 12203 and 13203 is limited to “emergency situations.” Opening Br. at 9 n.9. He is incorrect, as the plain language of these rules permits the Director to decline access to the forum where “the subject matter of the

[Footnote continued on next page]

As the Commission stated in its order approving the rules, FINRA Rules 12203(a) and 13203(a) empower the Director to deny access to its arbitration forum that are beyond its mandate, thereby “allowing [FINRA] to focus on cases that are appropriately in the forum” which “in turn, should promote the efficacy and efficiency of the arbitration forum.” *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); *see also Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *20. When discussing the Director’s authority, the Commission noted “enhanc[ing] the effectiveness of the arbitration process . . . furthers the public interest and the protection of investors.” *Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *20 (internal quotation omitted).

2. Sturniolo’s 2023 Arbitration Claim Was Inappropriate Because It Was a Collateral Attack on a State Court Judgment Denying Expungement of the Same Customer Dispute Information

FINRA properly applied FINRA Rule 13203(a) to deny access to its forum for Sturniolo’s 2023 arbitration claim because it was an impermissible collateral attack on a state court judgment denying expungement of the same customer dispute information.

Sturniolo’s 2023 arbitration claim was a collateral attack on the Colorado state court judgment. When filing his 2023 statement of claim, Sturniolo conveniently ignored the existence of the state court judgment denying him expungement of the same customer dispute information. But Sturniolo’s 2023 arbitration claim is necessarily adverse to the state court order because he

[cont’d

dispute is inappropriate.” FINRA Rules 12203 and 13203. Indeed, the Commission has previously rejected Sturniolo’s contention. *Consolidated Arbitration Applications*, Exchange Act Release No. 97248, 2023 SEC LEXIS 868, at *17 (Apr. 4, 2023).

sought in FINRA’s arbitration forum the same relief explicitly denied by the state court. The Director could reasonably conclude that Sturniolo’s 2023 arbitration claim—which sought the same relief denied by the state court—amounted to an impermissible collateral attack on the state court judgment and undermines the finality of that judgment. *Cf. Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *11-14 (holding that the Director could properly conclude that applicants’ statements of claim contending that the underlying arbitration proceedings were flawed amounted to collateral attacks on the merits on prior final FINRA arbitration awards and, thus, were inappropriate for arbitration). To wit, the state court order denying Sturniolo expungement of the same customer dispute information precluded Sturniolo from accessing FINRA’s arbitration forum.

On appeal, Sturniolo argues that the Colorado state court order granting FINRA’s motion for summary judgment is not on the merits, asserting that the Denver “[c]ourt never made a determination on the merits of Mr. Sturniolo’s claim, and instead, determined only that Mr. Sturniolo did not state a recognized cause of action *in Colorado*.” Opening Br. at 11. As a matter of law, the Colorado state court order granting summary judgment is a judgment on the merits that has preclusive effect.⁶ That the court granted FINRA’s motion for summary

⁶ See *Federated Dep’t Stores v. Moitie*, 452 U.S. 394, 399, n. 3, (1981) (dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is judgment on the merits); *Allen v. McCurry*, 449 U.S. 90, 96 (1980) (explaining that all federal courts are required to give preclusive effect to state-court judgments whenever the courts of the state from which the judgments emerged would do so); *Winslow v. Walters*, 815 F.2d 1114, 1116 (7th Cir. 1987) (summary judgment on issue of whether party failed to state a claim on which relief can be granted constitutes a decision on the merits with full res judicata effect); *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1339-40 (Colo. 1988) (holding that Colorado treats dismissal for failure to state a claim or a grant of summary judgment as a judgment on the merits that has preclusive effect); *Papol v. Armor Corr. Health Servs.*, No. 19CV408, 2020 Colo. Dist. LEXIS 1695 (El Paso Dist. Ct. Feb. 5, 2020) (holding that a dismissal for failure to state a claim is a dismissal on the merits in Colorado).

judgment because of Sturniolo’s failure to state a claim under Colorado law does not affect the “on the merits” aspect of the judgment or its preclusive effect.

Sturniolo argues that the theories upon which the Colorado state court relied to deny expungement are not applicable in FINRA’s arbitration forum, and that he did not have “the opportunity to be heard on the merits in state court.” Opening Br. at 11. Under FINRA Rule 2080, associated persons have the choice to pursue expungement of customer dispute information in FINRA’s arbitration forum or a court of competent jurisdiction. That the forums are distinct with different rules does not mean that associated persons may pursue successive claims after being denied expungement in one of the forums.⁷ *See, e.g., Canady v. Allstate Ins. Co.*, 282 F.3d 1005, 1018 & n.8 (8th Cir. 2002) (“Appellants may not file what is essentially the same action, albeit under different legal theories, in state court merely to obtain a more favorable result than the one already obtained in their first choice of forum.”); *Jarrard v. Se. Shipbuilding Corp.*, 163 F.2d 960, 961 (5th Cir. 1947) (“The plaintiffs had the option to sue either in the state or federal court. They were permitted to choose their forum, and they elected to bring their suit in the state court of Georgia. Having made their election they are estopped to deny the validity and finality of the state court decree.”).

On appeal, Sturniolo wrongly asserts that the “collateral estoppel issue” “has already been addressed, and rejected, by the Commission under identical circumstances.” Opening Br. at 11. In fact, the Commission has held that the Director may not deny access to FINRA’s

⁷ To the extent that Sturniolo is arguing that the court’s order is improper or that a Colorado judgment denying summary judgment should not have preclusive effect, Sturniolo is without recourse before the Commission. As the Commission has repeatedly held, it lacks the authority to review or set aside a state court order. *See Cynthia Mary Couyoumjian*, Exchange Act Release No. 97179, 2023 SEC LEXIS 751, at *7-8 (March 21, 2023); *Shaun Perry Nicholson*, Exchange Act Release No. 97604, 2023 SEC LEXIS 1419, at *6-8 (May 26, 2023).

arbitration forum to associated persons who obtained a vacatur of a prior arbitration award denying expungement. *See Couyoumjian*, 2023 SEC LEXIS 751, at *7-8; *Nicholson*, 2023 SEC LEXIS 1419, at *6-8. The Commission, however, has *not addressed* the issue of an associated person seeking to expunge customer dispute information when a court has previously denied expungement of the same customer dispute information. In this case, the existence of the underlying Vacatur of the Prior Arbitration Award is irrelevant to the Director's 2023 denial of access to FINRA's arbitration services and likewise irrelevant to the Commission's review of FINRA's action here. The Director's denial was based on the existence of a state court judgment denying expungement of the same customer dispute information.⁸

Sturniolo asserts the only reason he pursued the expungement action in Colorado is because of FINRA's improper denial of forum in 2020. Opening Br. at 11. But Sturniolo opted to pursue an action in state court and not to appeal FINRA's denial. That Sturniolo is now precluded from pursuing his expungement claim in FINRA's arbitration forum is the result of Sturniolo's choice, and he must abide by the consequences of that choice, not engage in serial, successive actions seeking the same relief. The Director therefore properly concluded that the subject matter was inappropriate and denied Sturniolo access to the arbitration forum.

3. Sturniolo's 2023 Arbitration Claim Was Inappropriate Because It Sought to Expunge the Same Customer Dispute Information as His 2020 Arbitration Claim

Even if there were not an intervening court judgment that precluded Sturniolo's 2023 arbitration claim, the claim is nonetheless inappropriate because it sought to expunge the same

⁸ The Director's denial also was based on the fact that Sturniolo's 2023 arbitration claim sought the same relief as his 2020 arbitration claim. *See Part II.A.3 infra*.

customer dispute information as his 2020 arbitration claim. FINRA properly applied FINRA Rule 13203(a) to deny access to its arbitration forum on this basis.

It is contrary to the principles of finality and efficiency to allow Sturniolo to file another arbitration claim seeking the same relief—i.e., to expunge the customer dispute information concerning the customer settlement. FINRA’s June 8, 2020 letter denying Sturniolo access to FINRA’s arbitration forum was a final FINRA action appealable to the Commission.⁹ Because FINRA previously considered a statement of claim seeking to expunge the same customer dispute information and issued a final FINRA action denying access to its arbitration forum, it was proper, and in the interest of the efficacy and efficiency of the forum, for the Director to deny Sturniolo access when he sought the same relief again three years later. *See Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes*, 72 Fed. Reg. at 4602.

Sturniolo asserts that he “refiled” his statement of claim in 2023 “[b]ased on [the *Couyoumjian*] order, and pursuant to the Vacate Order [of the Prior Arbitration Award].” Opening Br. at 5. Neither of these reasons justify accepting his 2023 arbitration claim to FINRA’s arbitration forum.¹⁰ First, Sturniolo relied on the Vacatur of the Prior Arbitration

⁹ In the June 8, 2020 letter, FINRA wrote it “closed this case without prejudice,” meaning that FINRA’s denial did not prohibit Sturniolo from filing an action in a court of competent jurisdiction to expunge the same customer dispute information. R. at 123; *see* FINRA Rule 2080. And Sturniolo did exactly that—he filed the expungement claim in Colorado state court. The language included in FINRA’s letter does not permit Sturniolo, three years after the denial of forum, to file another arbitration claim in FINRA’s arbitration forum seeking to expunge the same customer dispute information.

¹⁰ FINRA does not dispute that, pursuant to the reasoning later espoused in *Couyoumjian*, FINRA should have accepted Sturniolo’s 2020 arbitration claim seeking to expunge the customer dispute information concerning the customer settlement. Unlike *Couyoumjian*, however, Sturniolo did not appeal FINRA’s denial of access to its arbitration services in 2020.

Award in his 2020 arbitration claim, just as he relies on it again in his “refiled” 2023 arbitration claim. Sturniolo cannot re-litigate his 2020 expungement claim by “refiling” a statement of claim in 2023 seeking the same relief. The appeal process was available to correct FINRA’s error; subsequent litigation in FINRA’s arbitration forum seeking to expunge the same customer dispute information is not. *See SEC v. Milan Cap. Group, Inc.*, No. 00-CV-108, 2014 U.S. Dist. LEXIS 85532, at *8-11 (S.D.N.Y. June 23, 2014) (“A judgment merely voidable because [it is] based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause of action.”) (quoting *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398-99 (1981)).

Second, the *Couyoumjian* opinion does not grant Sturniolo the right to pursue the expungement sought in his 2020 arbitration claim, or belatedly pursue an appeal of FINRA’s forum denial, by filing a new arbitration claim three years later seeking to expunge the same customer dispute information. Like Sturniolo, FINRA denied Couyoumjian access to its arbitration forum after the claimant successfully obtained a vacatur of a prior arbitration award. *See Couyoumjian*, 2023 SEC LEXIS 751, at *7-8. Whereas Couyoumjian appealed to the Commission FINRA’s final action denying her forum in June 2020, Sturniolo did not appeal FINRA’s final action denying him forum in October 2020.¹¹ Sturniolo’s 2023 statement of claim is an improper attempt to litigate the issues in his 2020 statement of claim, the denial of which Sturniolo elected not to appeal to the Commission. *Cf. Hardison v. Alexander*, 655 F.2d 1281, 1288 (D.C. Cir. 1981) (“Under the [res judicata] doctrine, the parties to a suit and their privies are bound by a final judgment and may not relitigate any ground for relief which they

¹¹ Both Couyoumjian and Sturniolo are represented by the same counsel.

already have had an opportunity to litigate even if they chose not to exploit that opportunity whether the initial judgment was erroneous or not.”).¹²

In sum, it is contrary to the principles of finality and efficiency to allow Sturniolo access to FINRA’s arbitration forum to expunge the same customer dispute information he sought to expunge in his 2020 arbitration claim. Sturniolo should not be permitted to escape the consequences of his failure to appeal FINRA’s final action in 2020 by filing another arbitration claim three years later. The Director therefore properly concluded that the subject matter was inappropriate and denied Sturniolo access to FINRA’s arbitration forum.

B. FINRA Applied Its Rules Consistent with the Exchange Act

FINRA acted consistently with the purposes of the Exchange Act when the Director denied Sturniolo access to FINRA’s arbitration forum in 2023 to expunge the customer dispute information concerning the customer settlement.

First, FINRA properly applied FINRA Rule 13203(a) to deny access to its arbitration forum for Sturniolo’s 2023 statement of claim. Under the rules, the Director may “determine that a particular type of claim [is] inappropriate for arbitration and deny the use of the forum on a case-by-case basis.” *Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *18. Sturniolo’s 2023 arbitration claim was inappropriate because it was a collateral attack on a state court judgment denying expungement of the same customer dispute information. But even if there were not an intervening court judgment that precluded Sturniolo’s 2023 arbitration claim, Sturniolo’s 2023 arbitration claim was nonetheless inappropriate because it sought to expunge the same customer dispute information as his 2020 arbitration claim. Sturniolo’s 2023

¹² Sturniolo added additional cause of action to his 2023 statement of claim that he chose not include in his 2020 statement of claim. R. at 111, 1524-25.

arbitration claim amounts to successive, piecemeal litigation that is inappropriate, improper, and inefficient. It would be wholly inconsistent with FINRA's rules, the Exchange Act's purposes of investor protection and furthering the public interest, and the finality of court judgments and FINRA actions for the Director to allow Sturniolo to relitigate expungement in a new proceeding today. *Cf. Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *20 (holding that the Director's denial of access to FINRA's arbitration forum to applicants seeking to collaterally attack a prior arbitration award enhances the effectiveness of the arbitration process and furthers the public interest and protection of investors). Under these circumstances, FINRA acted in accordance with its rules and consistent with the Exchange Act when the Director determined that Sturniolo's 2023 arbitration claim was inappropriate given the purposes of FINRA and the intent of the FINRA Arbitration Code. R. at 1527; *see* FINRA Rule 13203; *id.*

Second, FINRA's May 22, 2023 denial of forum letter complied with its obligations under the Exchange Act by providing Sturniolo with a "statement setting forth the specific grounds" for the denial of his 2023 request for access to the arbitration forum. 15 U.S.C. § 78o-3(h)(2). The letter advised Sturniolo that the Director had determined his claim was inappropriate "[g]iven the purposes of FINRA and the intent of the Arbitration Code" and cited FINRA Rule 13203(a). R. at 1537. Sturniolo argues that the May 22, 2023 letter was "vague" and did not satisfy the obligations of Exchange Act. Opening Br. at 7. Sturniolo's argument strains credibility. The letter recited Sturniolo's repeated attempt to expunge the same customer dispute information in FINRA's forum and the state court order denying expungement of the

same customer dispute information.¹³ After a recitation of Sturniolo’s forum shopping and the resultant inefficiencies, the letter advised Sturniolo that the Director denied him access to FINRA’s arbitration forum because his arbitration claim was inappropriate “[g]iven the purposes of FINRA and the intent of the Arbitration Code.” The letter was sufficient to explain the grounds for the denial of the forum.¹⁴ Moreover, Sturniolo is not impaired in his ability to challenge FINRA’s determination before the Commission, and FINRA’s letter permits the Commission to discharge its review function. *See Consolidated Arbitration Applications*, 2023 SEC LEXIS 868, at *10; *Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 SEC LEXIS 1068, at *14 (Mar. 31, 2017), *aff’d*, 989 F. 3d 4 (D.C. Cir. Feb. 26, 2021).

C. Sturniolo’s 2023 Arbitration Claim Is Not Appropriate for FINRA’s Arbitration Forum No Matter Which Rules Are Applied

On appeal, Sturniolo requests that the Commission remand this matter to FINRA and direct FINRA to employ the arbitration rules that existed at the time that Sturniolo filed his 2023 arbitration claim or 2020 arbitration claim.¹⁵ Opening Br. at 12.

Sturniolo’s request ignores that no matter which rules are applied, Sturniolo is not entitled to a remand, and the Commission should dismiss his application for review with prejudice. The Commission recently approved FINRA rules effective October 16, 2023 that

¹³ Sturniolo’s 2023 arbitration claim failed to even mention the District Court of Denver County proceeding or the court order denying expungement of the same customer dispute information in his statement of claim. R. at 1521-26.

¹⁴ If Sturniolo had questions about the denial, the letter expressly invited him to contact the Director directly, providing both a direct telephone number and email address. R. at 1538. Sturniolo did not do so.

¹⁵ Sturniolo’s request is yet another example that Sturniolo’s 2023 arbitration claim is a re-filed version of his 2020 arbitration claim, which denial Sturniolo did not appeal to the Commission.

explicitly address the situation at issue here. *See Order Granting Accelerated Approval of a Proposed Rule Change, to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information*, 88 Fed. Reg. 24282 (Apr. 19, 2023) (SR-FINRA-2022-024); *FINRA Regulatory Notice 23-12* (Aug. 11, 2023), <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-12.pdf>. The recently approved rules expressly provide that an associated person is not permitted to file a request for expungement of customer dispute information if “a court of competent jurisdiction previously denied the associated person’s request to expunge the same customer dispute information.” *Order Granting Accelerated Approval of a Proposed Rule Change, to Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information*, 88 Fed. Reg. at 24288. The recently approved rules codified and updated the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance (“Guidance”) applicable to arbitration claims filed prior to October 16, 2023, like Sturniolo’s 2023 arbitration claim. *See FINRA Regulatory Notice 23-12*, at 2, <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-12.pdf>. That Guidance provides that an arbitration panel must deny the expungement request if “a court has issued an award or decision denying a broker’s request.” *FINRA Regulatory Notice 23-12*, Attachment B (Aug. 11, 2023), at 4 <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-12.pdf>.

In this case, FINRA properly applied the rules that were in effect at the time the Director determined that Sturniolo’s 2023 arbitration claim was inappropriate and denied him access to FINRA’s forum pursuant to FINRA Rule 13203. But under both the current and recently approved rules, Sturniolo’s 2023 statement of claim is inappropriate for FINRA’s forum for the reasons set forth herein.

III. CONCLUSION

FINRA acted in accordance with its rules when the Director denied Sturniolo access to FINRA's arbitration forum. The Director properly concluded that Sturniolo's 2023 arbitration claim was inappropriate for FINRA's forum because it was a collateral attack on a state court judgment denying expungement of the same customer dispute information and it sought to expunge the same customer dispute information as his 2020 arbitration claim. Sturniolo's forum shopping creates needless inefficiencies resulting in successive litigation that undermines the finality of court judgements and final FINRA actions. Accordingly, the Commission should dismiss Sturniolo's application for review.

Respectfully submitted,

/s/ Megan Rauch

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

October 4, 2023

CERTIFICATE OF SERVICE

I, Megan Rauch, certify that on this 4th day of October 2023, I caused a copy of the foregoing Brief in Opposition to Application for Review, In the Matter of the Application of Joseph Sylvester Sturniolo, Administrative Proceeding File No. 3-21503, to be filed through the SEC's eFAP system on:

Vanessa Countryman
The Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, DC 20549-1090

and served by email on:

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

/s/ Megan Rauch

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

CERTIFICATE OF COMPLIANCE

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

I, Megan Rauch, further certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition not to exceed 14,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 4,180 words.

/s/ Megan Rauch

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