

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

In the Matter of the Application of

NORMAN THORN ROBERTSON

For Review of Action Taken by

FINRA

File No. 3-21982

**MR. ROBERTSON’S REPLY TO FINRA’S OPPOSITION TO ROBERTSON’S
MOTION TO ADDUCE ADDITIONAL EVIDENCE**

Applicant, Norman Thorn Robertson (“Mr. Robertson”), through his Application for Review filed on July 22, 2024, sought Commission review of FINRA’s decision to deny him access to its arbitration forum to seek expungement of a regulatory disclosure from the Central Registration Depository (“CRD”). FINRA filed its Certified Record on July 31, 2024, but omitted critical evidence it the record. Mr. Robertson filed his Brief in Support of His Application for Review on October 7, 2024 (“Brief in Support”), citing to Exhibits 1-6 attached to the Brief in Support that were not included in the Certified Record. On October 9, 2024, Mr. Robertson filed his Motion to Adduce Additional Evidence (the “Motion”), seeking to include in the record Exhibits 1-6 (hereinafter together, “Additional Evidence”) attached to the Brief in Support. On November 4, 2024, FINRA filed its Brief in Opposition to the Application for Review and the

Motion to Adduce Additional Evidence. Mr. Robertson now timely replies to FINRA's opposition to the Motion.¹

The standard for admission of the Additional Evidence is outlined in Rule 452 of the Commission's Rules of Practice, and states that: (1) there must have been reasonable grounds to not adduce such evidence previously; and (2) that such additional evidence is material. 17 CFR § 201.452. FINRA conceded, or at least failed to raise any issue with and waives the right to dispute, that Mr. Robertson has satisfied the first prong of this standard. Opp. at 14-16. Therefore, the first prong is satisfied.

As to the second prong – materiality – FINRA has failed to refute Mr. Robertson's explanation as to why the Additional Evidence is material. FINRA's sole argument here is that “[n]one of the [Additional] [E]vidence sheds any light on whether FINRA offers the service of expunging regulatory information through its arbitration forum” and “whether the Commission has jurisdiction to consider this matter”. Opp. at 14-15. This argument has no merit. First, Mr. Robertson outlined the materiality in his Brief in Support and Motion and showed how the Additional Evidence shows that FINRA *does* offer the service of regulatory expungement. Br. Sup. at 6-11; Mot. at 3-4. FINRA argues in its Opposition that, because there is no explicit FINRA rule outlining the process for regulatory disclosure expungement, then it must be not permitted under its rules or the Exchange Act. Opp. at 7. The Additional Evidence tends to refute FINRA's logical fallacy here, and shows that FINRA does allow for expungement requests even where no explicit

¹ Although FINRA filed its opposition to Mr. Robertson's brief in support together with its opposition to Mr. Robertson's motion to adduce additional evidence, the deadlines to respond to these separate issues are different. Pursuant to the Commission's Order Granting Leave to Submit Late Brief issued on October 4, 2024, Mr. Robertson's reply brief to FINRA's opposition to the brief in support is due to be filed by November 18, 2024. Mr. Robertson therefore is only replying to FINRA's opposition to his motion to adduce additional evidence at this time, and expressly reserves his right to reply to FINRA's opposition to his brief in support by November 18, 2024.

rule outlines the process for relief.² Exhibits 5 and 6 are material evidence of these scenarios where, absent explicit allowance under any FINRA Rules, expungement of disclosures beyond customer dispute information is offered as a service by FINRA. Mot. at 4-5.

The jurisdictional question is also not the only issue raised in Mr. Robertson's Application for Review or Brief in Support, thus, evidence material to the merits of his arguments beyond jurisdiction should be admitted for purposes of the Motion at issue here. Exhibits 1-4 provide material procedural history involved in this case whereby Mr. Robertson was permitted by FINRA to expunge the exact factual circumstances that are related to the regulatory disclosure he now seeks to expunge. Mot. at 3-4.

Regardless, not only does the Additional Evidence provide support to the merits of his Application for Review and Brief in Support³, it also provides material support to Mr. Robertson's argument regarding the Commission's jurisdiction to hear the application for review. Mr. Robertson raised in his Brief in Support and Motion the argument that FINRA offers the service of expungement of regulatory disclosures based under general principles of equity available in its arbitration forum, and not solely pursuant to FINRA rules. The Additional Evidence is directly relevant and material to that issue.

The Additional Evidence also provides material support to Mr. Robertson's argument that the Exchange Act allows for this type of relief. The Exchange Act requires that FINRA rules "be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . and in general, to protect investors and the public interest." 15 U.S.C. § 78o-3(b)(6). FINRA's action in prohibiting Mr. Robertson from seeking expungement of the

² See Exhibits 5-6 (FINRA allowing for expungements of termination disclosures and criminal disclosures absent any FINRA rule explicitly permitting such relief).

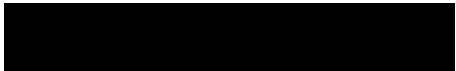
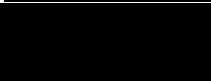
³ FINRA concedes this point in its Opposition, and thus recognizes its materiality beyond the jurisdictional argument. Opp. at 15.

regulatory disclosure, after a neutral arbitration panel found that the underlying customer dispute information that forms the basis of the regulatory disclosure was “factually impossible or clearly erroneous”⁴, is inconsistent with the Exchange Act and its purpose.

Regulatory disclosure expungement is allowed, or at least should be allowed, under FINRA rules and the Exchange Act. Mr. Robertson has met his burden for the Commission to grant his Motion here, as the Additional Evidence, as there were reasonable grounds to not adduce such evidence previously and such additional evidence is material. Therefore, the Commission should grant Mr. Robertson’s Motion.

Dated: November 7, 2024

Respectfully submitted,


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⁴ See Exhibit 2 at 3.

CERTIFICATE OF SERVICE

I, Austin Davis, certify that on November 7, 2024, I caused a copy of the foregoing Opening Brief of the above listed Applicant, in the matter of the Application for Review of Norman Thorn Robertson, Administrative Proceeding File No. 3-21982, to be filed through the SEC's eFAP system and served by electronic mail on:

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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.

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