UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88032 / January 24, 2020

Admin. Proc. File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18894, 3-18910, 3-18919, 3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19019, 3-19219, 3-19228, 3-19405, 3-19573, 3-19574, 3-19588

In the Matter of

Consolidated Arbitration Applications

For Review of Action Taken by FINRA

ORDER SEVERING PROCEEDINGS

Thomas Prentice and Timothy Arthur Vanderver III filed applications for review of FINRA action denying them access to FINRA's arbitration forum. On April 4, 2019, we consolidated their applications for review with other applications for review that sought to challenge FINRA action denying the applicants access to FINRA's arbitration forum, for the purpose of deciding whether the Commission has jurisdiction to consider the applications under Section 19(d) of the Securities Exchange Act of 1934.[1] The other applications for review all involve challenges to FINRA action declining to permit associated persons of member firms to use FINRA's arbitration forum to seek expungement of prior adverse arbitration awards arising from customer disputes (the "Consolidated Arbitration Applications").

We consolidated Prentice's and Vanderver's applications for review with the Consolidated Arbitration Applications because the record then before us suggested that Prentice's and Vanderver's cases involved the same common facts. In that order, we invited supplemental briefs from the parties.[2] Three applicants—Vanderver, Donald Anthony Wojnowski, and Ronald R. Wetzel—filed a supplemental brief relevant here. Upon review of that brief and the full records in all of these appeals, we find that Prentice's and Vanderver's

[1] *See Bart Steven Kaplow*, Exchange Act Release No. 18877, 2019 WL 1489709, at *2 (Apr. 4, 2019); *see also* 15 U.S.C. § 78s(d)(2).

[2] *Kaplow*, 2019 WL 1489709, at *3.

cases differ materially from the other applications for review that we consolidated. We therefore sever these two cases and will take further action as to them in separate orders.[3]

As to Prentice, unlike the other applicants in the Consolidated Arbitration Applications, the record indicates that Prentice may have accessed the arbitration forum. Prentice sought arbitration for two claims—one to expunge a prior adverse arbitration award and one to expunge a prior customer complaint. Although FINRA determined that his claim to expunge a prior adverse arbitration award was ineligible for expungement in FINRA's arbitration forum, it allowed his claim to expunge the customer complaint to proceed to arbitration. According to the award in the record, during the arbitration on that claim, Prentice asked the arbitrator to consider and rule on the request to expunge the prior adverse arbitration award despite FINRA's "decision to deny the forum as to" that request. The arbitrator "denied" this request, reasoning that "[e]ven absent" the determination that the claim was ineligible for arbitration, "second-guessing an arbitrator who heard or read all of the evidence would itself require a compelling justification. No such compelling justification exists here." Because it appears as a result that Prentice may not have been denied access to the arbitration forum for his request to expunge the prior adverse arbitration award,[4] we sever *Prentice* from the Consolidated Arbitration Applications.

As to Vanderver, unlike the other applicants in the Consolidated Arbitration Applications, the record now before us reflects that Vanderver has not sought expungement of a prior adverse arbitration award arising from a customer dispute. We thus also sever *Vanderver*.

Wojnowski suggests that his application suffers from the same problem as *Vanderver*. But Wojnowski has filed two appeals—*Donald Anthony Wojnowski*, Admin. Proc. File No. 3-19013, and *Donald Anthony Wojnowki*, Admin. Proc. File No. 3-19014. The appeal analogized to *Vanderver* is Admin. Proc. File No. 3-19014, which was not consolidated with the Consolidated Arbitration Applications. In Admin. Proc. File No. 3-19013, which was consolidated, it is clear from the record before us that Wojnowski's claim was to expunge a prior adverse award, and that FINRA denied access to the arbitration forum for that claim. This presents the same common jurisdictional issue as in the other Consolidated Arbitration Applications of whether the Commission has jurisdiction to review FINRA's determination to deny access to FINRA's arbitration forum for a claim to expunge a prior adverse award. Construing applicants' request to "correct . . . the record" as a request to sever *Wojnowski*, we conclude that *Wojnowski* was properly consolidated and deny the request.

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[3] *See* Rule of Practice 201(b), 17 C.F.R. § 201.201(b) (providing that the Commission may sever any proceeding with respect to one or more parties upon a showing of good cause).

[4] *Cf. John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *3-5 (Oct. 22, 2019) (concluding that FINRA action giving effect to arbitrator's award was not a "denial of access" to arbitration, and thus there was no jurisdiction under Section 19(d), where the applicant received a ruling from the arbitrator denying the requested relief and sought to challenge the ruling as an erroneous application of FINRA's rules). This severance order expresses no view as to whether FINRA in fact denied Prentice access to the arbitration forum. Prentice and FINRA will have the opportunity to address that question in their briefs.

Wetzel also suggests that his application should be severed from the Consolidated Arbitration Applications because Wetzel's prior adverse award involved a smaller compensatory damages award than in the other cases. But the common jurisdictional issue remains: whether the Commission has jurisdiction to review FINRA's determination to deny access to FINRA's arbitration forum for a claim to expunge a prior adverse award. Construing applicants' suggestion as a request to sever *Wetzel*, we deny the request.

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For these reasons, we have determined under our Rule of Practice 201(b) that the applications of review in *Prentice* and *Vanderver* should be severed from the other Consolidated Arbitration Applications. Briefing schedules in *Prentice* and *Vanderver* will issue separately.

Accordingly, it is ORDERED that the applications for review in *Thomas Prentice*, Admin. Proc. File No. 3-18894, and *Timothy Arthur Vanderver III*, Admin. Proc. File No. 3-19019, are severed from this consolidated proceeding.

By the Commission.

Vanessa A. Countryman
Secretary