

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 96070 / October 13, 2022

Admin. Proc. File No. 3-21073

In the Matter of the Application of

DAVID E. JENNINGS

For Review of Action Taken by

FINRA

ORDER SCHEDULING BRIEFS AND DENYING FINRA'S MOTION TO CONSOLIDATE
AND POSTPONE BRIEFING

David E. Jennings, an associated person of a FINRA member firm, filed a claim in FINRA's arbitration forum seeking to expunge from his Central Registration Depository record information about a prior arbitration award entered against him. FINRA initially facilitated the parties' selection of an arbitrator and scheduled an arbitration hearing, but subsequently issued a letter denying Jennings's use of the arbitration forum. Jennings filed an application for review of FINRA's action denying Jennings's use of the arbitration forum with the Commission.

After filing a copy of the index to the record on September 22, 2022,¹ FINRA filed an opposed motion to consolidate *Jennings* and the *Consolidated Arbitration Applications*. The *Consolidated Arbitration Applications* are cases we previously consolidated where the applicants appealed FINRA's denial of use of the arbitration forum as to claims seeking to expunge information about prior adverse arbitration awards.² It does not appear that *Jennings* shares the same common questions of law and fact as the *Consolidated Arbitration Applications*.³

¹ See 17 C.F.R. § 201.420(e).

² See *Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083 (Aug. 6, 2020).

³ See Rule of Practice 201(a), 17 C.F.R. § 201.201(a) (providing that the Commission may consolidate proceedings "involving a common question of law or fact").

As Jennings points out in his opposition to FINRA’s motion, his case is distinguishable from the consolidated cases because, unlike in those cases, FINRA denied Jennings’s use of its arbitration forum after it had already appointed an arbitrator and scheduled an arbitration hearing. Indeed, FINRA administratively postponed the hearing on the date it was scheduled and denied Jennings’s use of the forum two days later. Because these distinguishing characteristics may have an impact on the analysis of Jennings’s case, we find it appropriate to deny FINRA’s motion to consolidate *Jennings* with the *Consolidated Arbitration Applications*.

FINRA has also moved to postpone briefing in *Jennings* “pending resolution of the consolidated appeals.” We generally “adhere to a policy of strongly disfavoring such requests.”⁴ Given that *Jennings* appears to be distinguishable from the consolidated cases, we find that FINRA has not provided adequate grounds to postpone briefing in this case.

Accordingly, it is ORDERED that FINRA’s motion to consolidate *Jennings* with the *Consolidated Arbitration Applications* is denied; that FINRA’s motion to postpone briefing in *Jennings* is denied; and that, pursuant to Rule 450(a) of the Rules of Practice,⁵ a brief in support of the application for review shall be filed by November 14, 2022, a brief in opposition shall be filed by December 14, 2022, and any reply brief shall be filed by December 28, 2022.⁶

Pursuant to Rule 180(c) of the Rules of Practice, failure to file a brief in support of the application may result in dismissal of this review proceeding.⁷

⁴ Rule of Practice 161(b)(1), 17 C.F.R. § 201.161(b)(1).

⁵ 17 C.F.R. § 201.450(a).

⁶ As provided by Rule 450(a), no briefs in addition to those specified in this schedule may be filed without leave of the Commission. Attention is called to Rule of Practice 450(b) and (c), 17 C.F.R. § 201.450(b) and (c), with respect to content and length limitations, and Rules of Practice 150-153, 17 C.F.R. §§ 201.150-.153, with respect to form and service. Also, the Commission’s Rules of Practice were recently amended to include new e-filing requirements, which took effect on April 12, 2021. *Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission’s Rules of Practice*, 85 Fed. Reg. at 86,465-81.

⁷ 17 C.F.R. § 201.180(c).

For the Commission, by its Secretary and the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary