

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 97179 / March 21, 2023

Admin. Proc. File No. 3-20154

In the Matter of the

CYNTHIA MARY COUYOUMJIAN

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Associated person of FINRA member firm appealed FINRA action denying access to its arbitration forum. Associated person sought to arbitrate claim for expungement of customer dispute information from the Central Registration Depository after a court vacated a prior arbitration award denying expungement relief for that same information. *Held*, the Commission has authority to review FINRA’s action, the action is set aside, and FINRA is directed to grant associated person access to its arbitration forum.

APPEARANCES:

Michael Bessette, William Bean, and Frederick Steimling of HLBS Law for Cynthia Mary Couyoumjian.

Alan Lawhead, Megan Rauch, and Michael M. Smith for FINRA.

Appeal filed: Nov. 19, 2020
Last brief received: Mar. 22, 2021

Cynthia Mary Couyoumjian, an associated person of a FINRA member firm, seeks review of a FINRA action that denied her access to its arbitration forum. Couyoumjian's request to expunge customer dispute information from FINRA's Central Registration Depository ("CRD") was denied in a FINRA arbitration award. After a court vacated that award, Couyoumjian again sought to bring her expungement claim in FINRA's arbitration forum. FINRA found her claim ineligible for arbitration. We find that we may review FINRA's action, and we set it aside and direct FINRA to grant Couyoumjian access to its arbitration forum.

I. Background

Couyoumjian has worked in the securities industry since 1986. As relevant here, over the years she has been the subject of eight customer disputes that have been reported in FINRA's CRD. The CRD is a computerized database that contains information about broker-dealers and their representatives, including customer dispute information.¹ Generally, the information in the CRD is provided by FINRA member firms, associated persons, and regulatory authorities on the uniform registration forms,² which member firms are required to file in certain circumstances.³ The information in the CRD is used by FINRA and other regulators, as well as by firms when making personnel decisions.⁴ The CRD cannot be accessed by the general public.⁵ However, FINRA provides a free online tool, called BrokerCheck, which displays some of the CRD's information, including customer dispute information, regarding persons who are currently or formerly associated with FINRA member firms.⁶ Because BrokerCheck's information is derived from the CRD, information that is expunged from the CRD is not accessible via BrokerCheck.⁷

¹ See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081, Prohibited Conditions Relating to Expungement of Customer Dispute Information*, Exchange Act Release No. 72649, 79 Fed. Reg. 43,809, 43,809 (July 28, 2014).

² *Id.* These forms are Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form). *Id.* at 43,809 & n.6.

³ See, e.g., FINRA By-Laws Art. V, Sec. 2; FINRA Rule 1013(a)(2).

⁴ *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809.

⁵ See *id.*

⁶ See, e.g., *id.* at 43,809-10 (describing BrokerCheck and its relationship to the CRD); FINRA Rule 8312 (describing the information released on BrokerCheck). BrokerCheck is available at <http://brokercheck.finra.org>. In addition to displaying information about persons who are currently or formerly associated with FINRA member firms, BrokerCheck also allows people to research investment adviser firms and their representatives. *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *1 n.2 (Oct. 22, 2019).

⁷ See *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809-10.

Associated persons and their firms generally may use FINRA arbitration to seek to expunge customer dispute information from the CRD.⁸ FINRA arbitrators must follow certain procedures and apply certain standards when expunging customer dispute information.⁹ Even when an arbitrator recommends expungement relief, however, the information is not expunged from the CRD unless a court confirms the award, and generally FINRA must be named as an additional party in the court confirmation action.¹⁰

Here, in late 2018, Couyoumjian filed a statement of claim in FINRA’s arbitration forum seeking to expunge from the CRD information about eight separate customer disputes. On February 10, 2020, a FINRA arbitrator considered but denied Couyoumjian’s claims for expungement. Couyoumjian subsequently filed a petition to vacate that award in a Colorado state court. She argued that the arbitrator had “manifested a disregard for the law and exceeded his powers,” in part on the ground that “the vast majority of the [presented] evidence” allegedly supported her expungement claim. The court granted Couyoumjian’s request to vacate the arbitration award without explanation on July 15, 2020.¹¹

On October 23, 2020, Couyoumjian filed another arbitration statement of claim again seeking to expunge from the CRD information about the same eight customer disputes. On October 29, 2020, FINRA issued a letter to Couyoumjian from a senior case specialist stating:

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 Rule 12203(a) or Industry Code Rule 13203(a), we decline to accept your claim.

On November 19, 2020, Couyoumjian filed an application for review of this denial letter with the Commission.

⁸ See FINRA Rule 2080. FINRA arbitration may not always be available, however, because FINRA rules also provide that the Director of FINRA Dispute Resolution Services “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 [relevant FINRA Arbitration] Code, the subject matter of the dispute is inappropriate.” FINRA Rules 12203(a), 13203(a); *see also* FINRA Rules 12100(h), 13100(h) (defining the applicable FINRA Arbitration “Code”); FINRA Rules 12100(m), 13100(m) (defining the FINRA “Director”). In this particular case, as described more fully below, we find that denying use of the forum was inconsistent with FINRA’s rules.

⁹ FINRA Rules 12805, 13805.

¹⁰ FINRA Rule 2080(a)-(b).

¹¹ We take official notice of Couyoumjian’s petition to vacate and the Colorado state court’s order, which FINRA attached to its brief in opposition to Couyoumjian’s application for review. *See* Rule of Practice 323, 17 C.F.R. § 201.323 (“Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States . . .”).

II. Analysis

A. We have authority to review Couyoumjian’s application for review.

FINRA rules expressly authorize associated persons to request expungement of customer dispute information from the CRD by seeking a final arbitration award from a FINRA arbitrator or arbitration panel.¹² Section 19(d) of the Securities Exchange Act of 1934 authorizes the Commission to review actions taken by a self-regulatory organization (“SRO”), such as FINRA, where those actions prohibit or limit an individual’s access to services offered by the SRO.¹³ We consider under Section 19(d) claims that FINRA has prohibited or limited access to its arbitration forum for associated persons seeking expungement of customer dispute information.¹⁴

Here, however, FINRA asserts that we lack authority to review its determination that Couyoumjian’s claims are ineligible for arbitration because it already provided Couyoumjian with access to its arbitration forum and issued a final award in response to her expungement requests. But the prior arbitration award was vacated and has no continuing legal effect.¹⁵ FINRA therefore cannot invoke it as evidence that Couyoumjian has already received access to its arbitration forum. By denying Couyoumjian the opportunity to obtain a new, valid arbitration award regarding her claims, FINRA is prohibiting or limiting her access to a key aspect of FINRA’s arbitration service. That action is reviewable under Section 19(d).

FINRA suggests that the Colorado state court should not have vacated the prior award. But we do not consider that question, as we lack authority to review or set aside the Colorado state court’s order.¹⁶ We also disagree with FINRA that our decision in *Dustin Aiguier* compels

¹² See FINRA Rules 12904, 13904 (providing rules regarding arbitration awards); *see also Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083, at *2 (Aug. 6, 2020) (finding that “FINRA’s service of providing arbitration of expungement claims is ‘fundamentally important’ and central to its function as an SRO”).

¹³ 15 U.S.C. § 78s(d)(1)–(2).

¹⁴ *Consolidated Arbitration Applications*, 2020 WL 4569083, at *1-3; *see also* 15 U.S.C. § 78s(d)(1)–(2).

¹⁵ *See United States v. Crowell*, 374 F.3d 790, 792 (9th Cir. 2004) (stating that “vacate” means “to nullify or cancel”); *People ex rel. C.G.*, 410 P.3d 596, 601 (Colo. App. 2015) (“[V]acating a void judgment entirely destroys it and the vacatur restores the parties to the status quo ante, as though the trial court judgment had never been entered.”); *Vacate*, *Black’s Law Dictionary* (11th ed. 2019) (“To nullify or cancel; make void; invalidate.”); *see also* FINRA Rules 12904(b), 13904(b) (“*Unless the applicable law directs otherwise*, all awards rendered under the Code are final and are not subject to review or appeal.” (emphasis added)).

¹⁶ “[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 357 (1986). And no statute provides the Commission with the authority to review the orders of state courts. *Cf., e.g.*, Exchange Act

a different result.¹⁷ There, FINRA had denied Aiguier’s request to reopen an earlier arbitration hearing.¹⁸ We found that we lacked authority to consider Aiguier’s appeal of FINRA’s denial because the basis for his challenge amounted to an impermissible collateral attack on an existing arbitration award, and granting Aiguier relief would have required us to overturn the arbitration award, which we cannot do.¹⁹ We explained that the “exclusive remedy for challenging” a FINRA arbitration award “is to move to vacate, modify, or correct the award in court.”²⁰ Here, Couyoumjian’s appeal does not collaterally attack or otherwise ask us to overturn an arbitration award; rather, unlike Aiguier, Couyoumjian successfully moved to vacate the award in court.

Thus, the question here is whether FINRA’s action prohibited or limited Couyoumjian’s access to its arbitration forum by preventing her from seeking a final award as to her expungement requests after the prior award was vacated. We find that it did, and we may review that action under Exchange Act Section 19(d).

B. We set aside FINRA’s action because it was not in accordance with FINRA’s rules.

Under Exchange Act Section 19(f), we review a FINRA action prohibiting or limiting a person’s access to its services to determine if (1) the specific grounds on which FINRA based the action exist in fact; (2) the action was in accordance with FINRA’s rules; and (3) FINRA’s rules are, and were applied in a manner, consistent with the Exchange Act’s purposes.²¹

Section 19(d), 15 U.S.C. § 78s(d) (providing the Commission with authority to review certain actions of self-regulatory organizations).

¹⁷ See *Dustin Tylor Aiguier*, Exchange Act Release No. 88953, 2020 WL 2743938 (May 26, 2020).

¹⁸ *Id.* at *2.

¹⁹ *Id.* at *3; see also *Kincaid*, 2019 WL 5445514, at *3, 5 (finding that Section 19(d) does not provide us with the authority to overturn an arbitration award and that an applicant’s “recourse for challenging an allegedly erroneous arbitration award would be by seeking to vacate, modify, or correct the award in court through the Federal Arbitration Act”).

²⁰ *Aiguier*, 2020 WL 2743938, at *2 (cleaned up); see also *Thomas Christophe Prentice*, Exchange Act Release No. 96769, 2023 WL 1255084, at *3-4 (Jan. 30, 2023) (finding that the Commission lacked authority to overturn FINRA arbitration award, and noting that Prentice could have sought to vacate the award in court); *Kincaid*, 2019 WL 5445514, at *3 (finding that the Commission lacked authority to review FINRA action giving effect to arbitrator’s award and noting that Kincaid had failed to pursue available paths for setting aside arbitration award in court).

²¹ 15 U.S.C. § 78s(f). Section 19(f) also requires us to set aside FINRA’s action if we find that the action imposes an undue burden on competition. *Id.* Couyoumjian does not argue, and the record does not show, that FINRA’s action imposes such a burden here.

The factual basis on which FINRA acted is not in dispute. Instead, the issue is whether FINRA’s decision denying Couyoumjian access to its arbitration forum was in accordance with its rules. As noted, FINRA’s rules permit arbitration of requests to expunge customer dispute information.²² They also specify that arbitration awards are final and unreviewable “[u]nless the applicable law directs otherwise.”²³ The Federal Arbitration Act expressly provides that a party may challenge an arbitration award by moving to vacate the award in court—which Couyoumjian successfully did here.²⁴ And FINRA identifies no authority suggesting that a claim cannot be re-arbitrated in its arbitration forum once a court vacates a previous arbitration award denying that claim.²⁵

FINRA asserts that Couyoumjian should not be allowed “to access FINRA’s arbitration forum and relitigate expungement until she gets the outcome she wants.” And we have repeatedly sustained FINRA action preventing applicants from relitigating final arbitration awards.²⁶ But here, there is no final award—the prior arbitration award was vacated. And FINRA has identified no basis for treating Couyoumjian’s vacated arbitration award as if it were

²² See FINRA Rules 12805, 13805 (providing rules that arbitrators must follow “to grant expungement of customer dispute information”).

²³ FINRA Rules 12904(b), 13904(b).

²⁴ See, e.g., *Aiguier*, 2020 WL 2743938, at *3 (observing that a court can set aside an arbitration award under the Federal Arbitration Act); *Kincaid*, 2019 WL 5445514, at *5 (noting that “the only path for setting aside Kincaid’s adverse award—and granting him access to his requested ‘rehearing by the arbitrator[.]’—is through vacatur of the initial award in court”) (alteration in original) (quoting 9 U.S.C. § 10(a), (b)).

²⁵ Cf. *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 40 n.10 (1987) (stating that vacating a labor arbitration award “leav[es] open the possibility of further proceedings if they are permitted under the terms of the agreement”); *Close v. Motorists Mut. Ins. Co.*, 486 N.E.2d 1275, 1279 (Ohio Ct. App. 1985) (“The 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.”).

²⁶ See *supra* note 18-20 and accompanying text.

final and binding. We therefore find that FINRA's decision to deny Couyoumjian access to its arbitration forum to obtain a new, final arbitration award was not in accordance with its rules.

* * *

Accordingly, we set aside FINRA's action and direct it to grant Couyoumjian access to its arbitration forum. In doing so, we express no opinion on the underlying merits of Couyoumjian's requests for expungement. An appropriate order will issue.²⁷

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

²⁷ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97179 / March 21, 2023

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In the Matter of the
CYNTHIA MARY COUYOUMJIAN
For Review of Action Taken by
FINRA

ORDER SETTING ASIDE ACTION OF REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the action taken by FINRA denying Cynthia Mary Couyoumjian's request for access to its arbitration forum be, and hereby is, set aside, and it is further

ORDERED that FINRA grant Cynthia Mary Couyoumjian access to its arbitration forum.

By the Commission.

Vanessa A. Countryman
Secretary