

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 98099 / August 9, 2023

Admin. Proc. File No. 3-20120

In the Matter of the Application of  
  
JENNIFER ANNE JOHNSTON  
  
For Review of Action Taken by  
  
FINRA

ORDER REQUESTING ADDITIONAL BRIEFING

Jennifer Anne Johnston, an associated person of a FINRA member firm, filed a claim in FINRA’s intra-industry arbitration forum seeking to expunge from her Central Registration Depository record information about a customer complaint that evolved into an arbitration in FINRA’s customer arbitration forum. The resulting customer arbitration award, which was issued in 2010, stated that Johnston and her previous firm were both represented at the hearing by the same attorney. The award found that Johnston’s previous firm—but not Johnston—was liable for and had to pay \$5,500 in compensatory damages to the customers. But the award also found Johnston and her previous firm jointly and severally liable for paying the customers \$212.50 to reimburse them for half of their filing fee. Finally, the award stated that Johnston’s “request for expungement is denied.”

In the recently issued decision of *Kent Vincent Pearce*, the Commission held that it lacked authority to review a FINRA action denying an applicant’s use of its intra-industry arbitration forum to seek expungement of information about an underlying customer arbitration where the applicant had already received an award regarding that expungement request during the underlying customer arbitration.<sup>1</sup> In *Pearce*, the applicant introduced an affidavit describing the underlying customer arbitration, which indicated that he had participated in that arbitration.<sup>2</sup>

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<sup>1</sup> *Kent Vincent Pearce*, Exchange Act Release No. 97451, 2023 WL 3317916, at \*1, \*3-5 (May 8, 2023); accord *Alton Theodore Davis, Jr.*, Exchange Act Release No. 97721, 2023 WL 4026783, at \*1, \*3 (June 14, 2023).

<sup>2</sup> *Pearce*, 2023 WL 3317916, at \*1, \*4; see also *Davis*, 2023 WL 4026783, at \*1, \*3 (describing an affidavit submitted by the applicant about the underlying customer arbitration).

Here, by contrast, Johnston's briefs call into question the extent of her involvement in the underlying customer arbitration and, more specifically, the extent of her involvement in the request for expungement that was made during the underlying customer arbitration. But Johnston has not submitted any evidence concerning these issues.<sup>3</sup>

Upon consideration of the record and the briefs filed, we believe that additional briefing regarding Johnston's involvement in the underlying customer arbitration would "significantly aid the decisional process."<sup>4</sup> For example, the Commission may benefit from information about whether Johnston received notice of the underlying customer arbitration proceeding before the hearing; whether she agreed to representation by the attorney who the award says represented her during the customer arbitration proceeding; who precisely made the expungement request; when she was first informed of the expungement request; and when she first received notice of the underlying customer arbitration award.<sup>5</sup> The Commission may also benefit from the parties' briefing concerning how, if at all, any of the preceding information and the Commission's recent decisions in *Kent Vincent Pearce* and *Alton Theodore Davis, Jr.* impact this case.<sup>6</sup>

Accordingly, it is ORDERED that the parties submit briefs addressing these questions. Johnston's opening brief shall be filed by September 8, 2023. FINRA's response shall be filed by October 9, 2023. Johnston may file a reply by October 23, 2023. Pursuant to Rule of Practice 180(c), a party's failure to file a brief or comply with this order may result in the

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<sup>3</sup> Cf. Rule of Practice 452, 17 C.F.R. § 201.452 (providing that "the Commission may allow the submission of additional evidence").

<sup>4</sup> Rule of Practice 421(b), 17 C.F.R. § 201.421(b).

<sup>5</sup> We direct the parties' attention to Rules 154 and 452 of the Rules of Practice governing motions for leave to adduce additional evidence. 17 C.F.R. § 201.154, .452.

<sup>6</sup> *Pearce*, 2023 WL 3317916; *Davis*, 2023 WL 4026783.

Commission's determination of the matter at issue against that party or dismissal of one or more claims.<sup>7</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>7</sup> 17 C.F.R. § 201.180(c).