

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 98673 / October 2, 2023

Admin. Proc. File No. 3-20633

In the Matter of the Application of  
JONATHAN WILLIAM LONSKE  
For Review of Action Taken by  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Associated person of FINRA member firm filed an application for review of FINRA’s denial of the use of its arbitration forum to seek expungement. *Held*, because arbitration panel previously denied the same expungement claim, application for review is dismissed.

APPEARANCES:

*Michael Bessette, William Bean, Frederick Steimling, and Owen Harnett* of HLBS Law for Jonathan William Lonske.

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

Appeal filed: October 21, 2021  
Last brief received: February 22, 2022

Jonathan William Lonske, an associated person of a FINRA member firm, appeals FINRA's denial of use of its arbitration forum for a request to expunge information about a prior FINRA customer arbitration from his Central Registration Depository ("CRD") records. FINRA denied use of its arbitration forum because Lonske had previously requested—and was denied—expungement of the same information during the underlying customer arbitration. Lonske filed an application for review challenging FINRA's denial of use of the forum under Section 19(d) of the Securities Exchange Act of 1934.<sup>1</sup> We dismiss Lonske's application for review because Section 19(d) does not authorize our review of FINRA's action where, as here, an applicant already accessed FINRA's arbitration service by receiving an arbitration award on the merits.

## I. Background

Lonske has worked in the securities industry since 1995. As relevant here, in 2017, while Lonske was associated with Morgan Stanley Smith Barney, LLC, several customers complained that Lonske had recommended unsuitable investments between 2009 and 2016. Eventually, the customers filed a statement of claim against Lonske and Morgan Stanley in FINRA's arbitration forum, alleging, among other things, breach of contract, negligence, professional liability, and breach of fiduciary duty. Through their attorney, Lonske and Morgan Stanley filed an answer to the customers' statement of claim, arguing that the customers' claims were meritless. Lonske and Morgan Stanley requested that the customers' claims be dismissed and that the arbitrators "recommend expungement of any reference of this matter" from Lonske's CRD records. Lonske avers in an affidavit filed with the Commission that he participated in the underlying customer arbitration proceeding by being present and testifying at the hearing and denying the merits of the customers' allegations.<sup>2</sup> Lonske also claims that Morgan Stanley requested expungement on his behalf in its statement of answer in the underlying customer arbitration, but he does not recall his expungement request being addressed at the hearing. Finally, Lonske contends that he was represented by Morgan Stanley's counsel, not "an independent counsel of [his] choosing," during the proceeding.

In March 2020, after sixteen hearing sessions, the customer arbitration panel denied the customers' claims in their entirety. The panel also denied Lonske's request for expungement of the matter from his CRD record.

The customer dispute, including the final arbitration award denying the customers' claims, was reported in FINRA's CRD. The CRD is a computerized database that contains information about broker-dealers and their representatives, including information about customer complaints, customer allegations made in arbitration proceedings, and any arbitration awards

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<sup>1</sup> 15 U.S.C. § 78s(d).

<sup>2</sup> Lonske filed an unopposed motion to adduce an affidavit describing the underlying customer arbitration proceeding. We grant the motion under Rule of Practice 452 because the affidavit is material and there were reasonable grounds for Lonske's failure to adduce it previously. 17 C.F.R. § 201.452.

resulting from those allegations.<sup>3</sup> Generally, the information in the CRD is provided by FINRA member firms, associated persons, and regulatory authorities on the uniform registration forms,<sup>4</sup> which member firms are required to file in certain circumstances.<sup>5</sup> The information in the CRD is used by FINRA and other regulators, as well as by firms when making personnel decisions.<sup>6</sup>

The CRD cannot be accessed by the general public.<sup>7</sup> However, FINRA provides a free online tool called BrokerCheck, which displays some of the CRD's information.<sup>8</sup> In this particular case, however, the customer dispute information at issue is not displayed on Lonske's BrokerCheck report.<sup>9</sup>

Associated persons and their firms generally may use FINRA arbitration to seek to expunge customer dispute information from the CRD.<sup>10</sup> FINRA arbitrators must follow certain

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<sup>3</sup> 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).

<sup>4</sup> *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.

<sup>5</sup> See, e.g., FINRA By-Laws Art. V, Sec. 2; FINRA Rule 1013(a)(2).

<sup>6</sup> *Order Approving a Proposed Rule Change to Adopt FINRA Rule 2081*, 79 Fed. Reg. at 43,809.

<sup>7</sup> See *id.*

<sup>8</sup> 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).

<sup>9</sup> See BrokerCheck Report for Jonathan William Lonske, at 13-15, [https://files.brokercheck.finra.org/individual/individual\\_2594921.pdf](https://files.brokercheck.finra.org/individual/individual_2594921.pdf) (last visited July 7, 2023) (reporting two settled customer disputes but no customer disputes that ended in an arbitration award). We take official notice of Lonske's BrokerCheck report pursuant to Commission Rule of Practice 323. See *Michael Albert DiPietro*, Exchange Act Release No. 77398, 2016 WL 1071562, at \*1 n.1 (Mar. 17, 2016) (taking official notice of BrokerCheck records and citing Rule of Practice 323, 17 C.F.R. § 201.323).

<sup>10</sup> 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 deny use of the FINRA arbitration forum if the dispute's subject matter is inappropriate. See, e.g., *Alton Theodore Davis, Jr.*, Exchange Act Release No. 97721, 2023 WL 4026783, at \*2 n.10 (June 14, 2023) (describing these rules, and noting that amendments to them have been approved but are not yet effective); *FINRA Adopts Amendments to the Codes of Arbitration Procedure to*

procedures and apply certain standards when expunging customer dispute information.<sup>11</sup> Even when an arbitrator grants 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.<sup>12</sup>

Here, in September 2021, Lonske again sought to expunge all information related to the March 2020 customer arbitration from the CRD by filing an intra-industry statement of claim in FINRA’s arbitration forum against Morgan Stanley.<sup>13</sup> As he had during the customer arbitration, Lonske asserted that the underlying customer allegations were meritless.<sup>14</sup>

On September 22, 2021, FINRA sent Lonske a letter informing him that the Director of FINRA Dispute Resolution Services denied use of the arbitration forum because the customer arbitration award had denied expungement and, as result, the subject matter of the dispute was inappropriate.<sup>15</sup> On October 21, 2021, Lonske filed an application for review with the Commission, arguing that FINRA improperly denied use of its arbitration forum.

## II. Analysis

Exchange Act Section 19(d) authorizes us to review actions taken by a self-regulatory organization (“SRO”) such as FINRA only in specific circumstances.<sup>16</sup> One such circumstance

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*Modify the Process Relating to the Expungement of Customer Dispute Information*, FINRA Regulatory Notice 23-12, at 2 (Aug. 11, 2023), <https://www.finra.org/sites/default/files/2023-08/Regulatory-Notice-23-12.pdf> (providing that amendments to the relevant rules will become effective on October 16, 2023). In this case, as described more fully below, we find that Lonske already accessed FINRA’s arbitration service as to his expungement claim.

<sup>11</sup> FINRA Rules 12805, 13805.

<sup>12</sup> FINRA Rule 2080(a)-(b).

<sup>13</sup> Lonske also requested expungement of information regarding five other customer disputes, but those requests are not at issue in this appeal.

<sup>14</sup> Specifically, Lonske’s statement of claim argued that the allegations were “patently false” and factually impossible or clearly erroneous. *See* FINRA Rule 2080(b)(1)(A), (C) (providing as grounds for expungement that “the claim, allegation or information is factually impossible or clearly erroneous” or “is false”).

<sup>15</sup> *See* FINRA Rules 12203(a), 13203(a) (providing that the Director 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”).

<sup>16</sup> 15 U.S.C. § 78s(d)(1)-(2).

is where an SRO “prohibits or limits any person in respect to access to services offered by [that SRO].”<sup>17</sup>

For the reasons articulated in detail in *Kent Vincent Pearce*,<sup>18</sup> we find that we lack authority to consider Lonske’s application for review because he already accessed the service of using FINRA’s arbitration forum to seek to expunge the same customer dispute information, and on the same grounds, at issue here.<sup>19</sup> Similarly, to the extent Lonske challenges the merits of the customer arbitration panel’s resolution of his expungement claim, as explained in *Pearce*, we lack authority to consider that claim.<sup>20</sup>

As in *Pearce*, even though Lonske previously requested expungement in the customer arbitration forum, he now requests expungement in the intra-industry arbitration forum without identifying any material difference between the two forums as to his expungement request.<sup>21</sup> Indeed, FINRA’s rules explicitly apply the same expungement standard to both customer and intra-industry arbitrations.<sup>22</sup> Lonske argues that, because the customer arbitration award denied *both* the customers’ claims *and* Lonske’s expungement request, the panel implicitly applied a different expungement standard than would apply in intra-industry arbitrations. But we find no basis for this conclusion. First, even assuming, arguendo, that the customer arbitration panel in Lonske’s case failed to apply the expungement standard laid out in FINRA’s rules, the panel may have simply committed an error, rather than demonstrating a material difference between the customer and intra-industry arbitration forums. But even if that were so, we lack statutory

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<sup>17</sup> *Id.* The Exchange Act provides three other bases for our review of an SRO action: if the action imposes a final disciplinary sanction on a member of the SRO or an associated person; if it denies membership or participation to the applicant; or if it bars a person from becoming associated with a member. *See id.* Lonske does not argue that any of these alternate bases apply here, so we do not address them. *Jonathan Edward Graham*, Exchange Act Release No. 89237, 2020 WL 3820988, at \*3 & n.13 (July 7, 2020) (not reaching “alternate bases for Commission review” where applicant did not contend that those bases applied); *cf. Citadel Sec. LLC*, Exchange Act Release No. 78340, 2016 WL 3853760, at \*3 n.18 (July 15, 2016) (stating that the Commission will not exercise its review authority “on a basis [applicants] disclaim”), *aff’d sub nom., Chicago Bd. Options Exch. v. SEC*, 889 F.3d 837 (7th Cir. 2018).

<sup>18</sup> Exchange Act Release No. 97451, 2023 WL 3317916 (May 8, 2023).

<sup>19</sup> *See id.* at \*3 (dismissing application for review because applicant had already sought expungement during underlying customer arbitration).

<sup>20</sup> *See id.* at \*4.

<sup>21</sup> *See id.*

<sup>22</sup> *See* FINRA Rules 2080(b)(1)(A), (C), 12805(c), 13805(c) (providing the same grounds for expungement in customer arbitrations as in intra-industry arbitrations, including the ground that the customer’s claim is “factually impossible,” “clearly erroneous,” or “false”). Notably, Lonske based his new expungement claim on Rule 2080(b)(1) only. *See supra* note 14 and accompanying text.

authority to review or overturn a customer arbitration award based on an arbitrator's alleged failure to correctly apply FINRA rules.<sup>23</sup>

Second, the customer arbitration award here *is* consistent with the panel's having applied the same standard applicable in all FINRA arbitrations by determining that, even though the customers failed to prove their claims, Lonske also failed to establish that he was entitled to expungement because he failed to prove that the customers' claims were false.<sup>24</sup> Lonske notes that a sample expungement order posted on FINRA's website found the customers' claims factually impossible or clearly erroneous because they were "not credible" and "not supported by the evidence."<sup>25</sup> But just because an arbitrator *can* conclude that customers' claims are affirmatively false if they are not credible or not supported by the evidence does not mean that an arbitrator *must* do so in all cases. Instead, an arbitrator might find that the customers' claims are simply not proven if they are not credible or not supported by the evidence. For example, the customer arbitration panel in Lonske's case might have found that both the customers *and* Lonske were not credible or presented claims that were not supported by the evidence and therefore found that no party established entitlement to relief.<sup>26</sup>

Further, as in *Pearce*, Lonske himself chose to bring his expungement claim in the customer arbitration forum. Any resulting practical or strategic difference in bringing his claim in one forum rather than the other does not reflect a difference in the service provided by FINRA.<sup>27</sup>

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<sup>23</sup> See, e.g., *Kincaid*, 2019 WL 5445514, at \*4-5 (taking "no position on whether the arbitrator correctly applied [FINRA] rules" and finding that the Commission lacks authority to set aside a FINRA arbitration award); see also *infra* notes 33-34 and accompanying text (explaining that Lonske could have challenged the customer arbitration panel's denial of expungement in court).

<sup>24</sup> See *supra* note 22 and accompanying text; cf. *Redmond v. Socha*, 837 N.E.2d 883, 897 (Ill. 2005) ("[B]ecause the law demands that a plaintiff meet the burden of proving every necessary element of his claim by a preponderance of the evidence, a jury may find against both the plaintiff and the counterplaintiff in a negligence action, even when the evidence suggests that the sole cause of the accident was the negligence of either or both parties...."); *Grenwelge v. Shamrock Reconstructors, Inc.*, 705 S.W.2d 693, 694 (Tex. 1986) ("The jury's failure to find that [Party A] breached the contract merely means that [Party B] failed to carry their burden of proving the fact. It does not mean the reverse, that [Party A] substantially performed the contract.").

<sup>25</sup> FINRA, Examples of Expungement Orders, <https://www.finra.org/arbitration-mediation/examples-expungement-orders> (last visited June 30, 2023) (quoting FINRA Arbitration Case No. 11-01822).

<sup>26</sup> Cf. *Redmond*, 837 N.E.2d at 899 ("The jury could have found neither party credible and, thus, found the evidence so conflicting, inconclusive, and unsatisfactory that it could not find, by a preponderance of the evidence, that either party had made its case.").

<sup>27</sup> See *Pearce*, 2023 WL 3317916, at \*4.

Lonske also challenges the merits of the first arbitration panel’s denial of his expungement request by arguing, for example, that the panel did not meaningfully address his expungement claim, its award was contradictory, and it should have held a separate hearing regarding expungement.<sup>28</sup> But FINRA’s role in providing access to its arbitration service does not include a process whereby it reviews an arbitrator’s award to ensure that the arbitration complied with FINRA’s rules.<sup>29</sup> FINRA has only a ministerial role in preparing and serving the awards that arbitrators render.<sup>30</sup> And, just as in *Pearce*, Lonske was provided extensive access to FINRA’s arbitration service. In particular, during the underlying customer arbitration, Lonske challenged the merits of the customers’ allegations, testified at the hearing, and requested expungement of all information regarding the arbitration from his CRD records, and then Lonske received a final, adverse award on his expungement request.<sup>31</sup> Besides, although Lonske now claims that the prior arbitration lacked fairness, and the arbitration panel failed to follow FINRA’s rules, Lonske cannot establish our authority to review FINRA’s current action by making this kind of collateral attack on his 2020 final arbitration award.<sup>32</sup>

We also note that Lonske could have sought to vacate, modify, or correct the 2020 arbitration award in court,<sup>33</sup> but he did not do so. Lonske argues that it would not have been in his “best interest” to seek to vacate the award, as it had denied the customers’ claims. But he fails to explain why he could not have sought to vacate the award in part—*i.e.*, only the part that denied his expungement claim.<sup>34</sup> Besides, Lonske’s strategic decision not to seek to overturn the

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<sup>28</sup> We note that Lonske has not suggested that he or his attorney requested a separate expungement hearing during the underlying customer arbitration. We also note that he has not argued that FINRA prevented him from retaining his own attorney during the customer arbitration. *See Pearce*, 2023 WL 3317916, at \*4 n.27 (noting that “nothing in FINRA’s rules prevented Pearce from retaining his own attorney during the underlying customer arbitration”).

<sup>29</sup> *See Pearce*, 2023 WL 3317916, at \*4; *Kincaid*, 2019 WL 5445514, at \*3; *see also* FINRA Rules 12904(b), 13904(b) (providing that a FINRA arbitration award is “final” and “not subject to review or appeal,” unless applicable law directs otherwise).

<sup>30</sup> *See Pearce* 2023 WL 3317916, at \*4; *Kincaid*, 2019 WL 5445514, at \*3.

<sup>31</sup> *See Pearce* 2023 WL 3317916, at \*4. We note that, although Lonske avers that he does not remember the expungement request being discussed at the customer arbitration hearing, he has not argued that FINRA prevented him from pursuing his expungement request at that hearing.

<sup>32</sup> *See id.*; *cf. Kincaid*, 2019 WL 5445514, at \*5 (rejecting Kincaid’s attempt to establish that we may exercise review by re-framing his arguments in terms of FINRA’s failure to “enforce its rules” by observing that, “[a]s courts have long held, parties cannot re-frame their argument to make an otherwise impermissible collateral attack on an arbitration award”).

<sup>33</sup> *See Pearce* 2023 WL 3317916, at \*4.

<sup>34</sup> *Cf. Shaun Perry Nicholson*, Exchange Act Release No. 97604, 2023 WL 3686053, at \*2 (May 26, 2023) (noting that applicant successfully moved in court to confirm part and vacate part of a FINRA arbitration award).

2020 award does not mean that he lacked access to FINRA’s arbitration service.<sup>35</sup> And, even assuming arguendo that Lonske lacked a realistic avenue for challenging the 2020 arbitration award denying expungement relief, his inability to obtain the relief he seeks does not vest us with statutory authority to review FINRA’s action here.<sup>36</sup>

Accordingly, we dismiss the application for review. An appropriate order will issue.<sup>37</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>35</sup> Cf. *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at \* 17 (Jan. 30, 2009) (“Public policy considerations favor the expeditious disposition of litigation, and a respondent cannot be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action.”) (cleaned up), *aff’d*, 416 F. App’x 142 (3d Cir. 2010).

<sup>36</sup> See *Graham*, 2020 WL 3820988, at \*4 (“Even if [the applicant] were correct that he has no other venue for relief, that would not confer [review authority] where Congress has not authorized it.”)

<sup>37</sup> 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. 98673 / October 2, 2023

Admin. Proc. File No. 3-20633

In the Matter of the Application of  
JONATHAN WILLIAM LONSKE  
For Review of Action Taken by  
FINRA

ORDER DISMISSING APPLICATION FOR REVIEW OF ACTION TAKEN BY  
REGISTERED SECURITIES ASSOCIATION

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

ORDERED that this application for review filed by Jonathan William Lonske is  
dismissed.

By the Commission.

Vanessa A. Countryman  
Secretary