SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 101273 / October 8, 2024

Admin. Proc. File No. 3-20905

In the Matter of the Application of

JAMES THOMAS YOUNG

For Review of Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF FINRA ACTION

Individual appealed FINRA action prohibiting access to its arbitration forum to seek expungement of customer dispute information regarding a final adverse arbitration award from the Central Registration Depository. *Held*, application for review is dismissed.

APPEARANCES:

Michael Bessette and *William R. Bean* of HLBS Law for James Thomas Young.

Alan Lawhead, *Celia Passaro*, and *Megan Rauch* for FINRA.

Appeal filed: June 22, 2022
Last brief received: June 20, 2023

James Thomas Young, an associated person of a FINRA member firm, attempted to access FINRA's arbitration forum to seek expungement of customer dispute information concerning a final adverse arbitration award from FINRA's Central Registration Depository ("CRD"). FINRA prohibited Young from accessing its arbitration forum for this purpose. He now seeks review of FINRA's action. We sustain FINRA's action, finding that FINRA acted in accordance with its rules when it denied use of its arbitration forum for Young's collateral attacks on a final adverse arbitration award.

I. Background

Young first joined the securities industry in 1991. In July 1997, one of Young's customers filed an arbitration case against Young and his former firm in the arbitration forum of NASD, FINRA's predecessor. The customer alleged, among other things, unauthorized trading, breach of fiduciary duty, and suitability violations. In July 1998, after a two-day hearing, an arbitration panel issued an award finding Young liable to the customer for $23,855 in compensatory damages and $7,971 in attorney's fees. The record does not reflect that Young sought expungement relief during the underlying customer arbitration proceeding, or that he moved in court to vacate, modify, or correct the underlying adverse customer arbitration award.

The final adverse customer arbitration award was reported in FINRA's CRD. The CRD is a database that contains information about broker-dealers and their representatives, including information about customer allegations made in arbitration proceedings and any arbitration awards resulting from those allegations.[1] Regulators and firms can access the CRD, whereas the public can access FINRA's free online tool called BrokerCheck, which displays some of the CRD's information.[2] FINRA rules generally permit associated persons and their firms to use FINRA arbitration to seek to expunge customer dispute information from the CRD.[3] FINRA arbitrators must follow certain procedures and apply certain standards when expunging customer dispute information.[4] Even when an arbitrator grants expungement relief, however, the information is not expunged from the CRD unless a court confirms the award granting

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1 *See, e.g.*, *Consol. Arb. Applications*, Exchange Act Release No. 97248, 2023 WL 2805323, at *2 (Apr. 4, 2023) (explaining in more detail the CRD database and the process for expungement under FINRA's rules).

2 *See, e.g.*, *id.* BrokerCheck is available at http://brokercheck.finra.org

3 *See* FINRA Rule 2080. As described below, however, FINRA arbitration may not always be available because FINRA rules also provide that the Director of FINRA Dispute Resolution Services may deny use of the FINRA arbitration forum in certain circumstances. *See* FINRA Rules 12203, 13203. These rules have been amended since Young filed his May 2022 statement of claim. In our analysis below, however, we refer only to the rules that existed before these amendments. In this case, as described more fully below, we find that the Director properly denied Young's access to FINRA's arbitration service under these rules.

4 FINRA Rules 12805, 13805. These rules, which we do not cite below, have also been amended since Young filed his May 2022 statement of claim.

expungement relief, and generally FINRA must be named as an additional party in the court confirmation action.[5]

Here, in May 2022, Young filed an arbitration statement of claim with FINRA's arbitration forum seeking to expunge all information from the CRD about the underlying 1998 final adverse arbitration award against him. Young's statement of claim asserted that the customer allegations that resulted in the award were meritless.[6]

On May 27, 2022, FINRA issued a letter denying Young's use of its arbitration forum. The letter stated that the Director of FINRA Dispute Resolution Services ("Director") found that the subject matter of Young's dispute was inappropriate for arbitration because he requested expungement of an adverse arbitration award. Young then sought Commission review of the denial letter.

II. Analysis

Under Exchange Act Section 19(f), we review a FINRA action prohibiting a person's access to its services to determine whether (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.[7]

For the reasons articulated below and in the *Consolidated Arbitration Applications*,[8] we dismiss Young's application for review because we find that FINRA acted in accordance with its rules when it denied use of its arbitration forum for a collateral attack on a final adverse arbitration award.

A. The specific grounds for FINRA's action exist in fact.

FINRA denied Young the use of its arbitration forum on the ground that he sought to expunge information concerning a final adverse arbitration award. Young does not dispute this fact, which is supported by the record. Accordingly, we find that the specific ground on which FINRA denied access to its arbitration forum exists in fact.

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5 FINRA Rule 2080(a)-(b).

6 Invoking language from the applicable FINRA rule, Young's statement of claim argued that the allegations were "false" and "clearly erroneous." *See* FINRA Rule 2080(b)(1)(A), (C) (providing as grounds for expungement that the "claim, allegation or information is false" or "factually impossible or clearly erroneous").

7 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.* Young does not argue, and the record does not show, that FINRA's action imposes such a burden here.

8 2023 WL 2805323, *pet. for review dismissed in part, denied in part sub nom.*, *Gaskill v. SEC*, No. 23-1139, 2024 WL 2734998 (D.C. Cir. May 28, 2024) (per curiam) (unpublished).

B. FINRA denied access to its arbitration forum in accordance with its rules.

FINRA Rules 12203(a) and 13203(a) allow the Director to deny "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."[9] FINRA's relevant arbitration codes, in turn, provide that, "[u]nless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal."[10]

Just as in the *Consolidated Arbitration Applications*, Young's statement of claim sought to expunge information about a final adverse arbitration award by alleging that the underlying customer allegation that led to that award was "false" and "factually impossible or clearly erroneous." The Director could properly conclude that Young's collateral attack on such an arbitration award would both undermine its finality and improperly subject it to review.[11] Young argues that his statement of claim does not constitute a collateral attack because it did not request for the adverse award to be vacated or removed from every portion of FINRA's website. But regardless of the scope of the remedy requested by Young, his challenges to the merits of the underlying final arbitration award are collateral attacks that would undermine the award's finality.[12] Thus, FINRA acted in accordance with its rules when it denied Young's access to its arbitration forum.[13]

Young attempts to distinguish his case from *Consolidated Arbitration Applications* by claiming that his statement of claim also made allegations "pursuant to principles of equity," and that he did not need to raise these equitable claims more clearly because the "FINRA Forum is not bound by strict pleading requirements." But Young's statement of claim did not seek expungement based on equitable grounds. Instead, he requested expungement relief based *only* on the alleged lack of merit of the underlying customer allegations. For example, the statement of claim alleged that disclosure of the customer dispute information "does not offer any public protection and has no regulatory value" *because* that information is allegedly "patently false."

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9 FINRA Rules 12203(a), 13203(a) (2022); *see also* FINRA Rules 12100(h), (m), 13100(h), (m) (defining the applicable FINRA Arbitration "Code" and the FINRA "Director"). FINRA Rules 12203(a) and 13203(a) also provide that the Director may deny access to the arbitration forum if "accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives." But the parties agree that access was not denied in this case due to a risk to health or safety.

10 FINRA Rules 12904(b), 13904(b); *see also* FINRA Rule 10330(b) (providing the same for arbitration cases filed before April 16, 2007).

11 *See Consol. Arb. Applications*, 2023 WL 2805323, at *4-5.

12 *See id.* at *2 n.11, *5 (holding that challenges to merits of underlying final arbitration award were collateral attacks, even though applicants were not requesting that the awards be vacated or removed from another portion of FINRA's website).

13 *See id.* at *4-5.

And as noted by the D.C. Circuit, "even if recast as 'equitable' claims, [such claims] are still collateral attacks on the arbitral awards."[14]

Although Young's statement of claim also included a catchall request for any other "just and equitable" relief, this was insufficient to notify FINRA that Young was asserting broader equitable grounds for his expungement request. Indeed, his statement of claim explicitly and repeatedly challenged the merits of the underlying customer allegations, without raising any equitable arguments or pleading any specific facts relating to broader equitable issues. For example, Young argues for the first time in his brief to us that expungement is warranted because the customer dispute disclosure in the CRD "is more harmful to him than beneficial to the investing public." But Young failed to raise this argument or any facts supporting it in his statement of claim to FINRA. Because Young failed to exhaust such an equity-based ground for his expungement request before FINRA, we do not consider it.[15]

Young also argues that the Director can deny use of the arbitration forum only if emergency or unusual circumstances exist. But we rejected that same argument in the *Consolidated Arbitration Applications*, and we reaffirm that holding here.[16]

Finally, Young argues that interpreting FINRA rules is a matter of contract, which is within "the exclusive domain of the arbitrator." But FINRA Rules 12203(a) and 13203(a) provide the Director with authority to determine whether the subject matter of a dispute is inappropriate for arbitration given the intent of the FINRA Arbitration Codes, which necessarily requires the Director to interpret the FINRA Arbitration Codes.[17]

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[14] *See Gaskill*, 2024 WL 2734998, at *3 (noting that "in their requests for expungement, the petitioners claimed that *because* the allegations in the prior arbitrations were false, it was not in the public interest for FINRA to continue publicizing the results of those arbitrations," and therefore "[e]ven if recast as 'equitable' claims, these are still collateral attacks on the arbitral awards").

[15] *See, e.g.*, *Kent Vincent Pearce*, Exchange Act Release No. 97451, 2023 WL 3317916, at *5 (May 8, 2023) (not considering whether Pearce could have brought expungement request based on equitable grounds because he had not raised that claim to FINRA); *Consol. Arb. Applications*, 2023 WL 2805323, at *6 ("[W]e will not review a FINRA action if the applicant failed to exhaust FINRA's administrative remedies.")

[16] 2023 WL 2805323, at *7 ("Nothing . . . suggest[s] that emergency or unusual circumstances are required when denying access based on a determination that the subject matter is inappropriate for arbitration, the basis on which the Director denied access to applicants.").

[17] *Cf. Ryan William Mummert*, Exchange Act Release No. 97680, 2023 WL 3931456, at *4 (June 9, 2023) (holding that FINRA Rules 12203(a) and 13203(a) necessarily imply that the Director can "engage in limited fact-finding to determine the scope of 'the subject matter of the dispute'").

C. FINRA's rules are, and were applied, consistent with the Exchange Act's purposes.

As in the *Consolidated Arbitration Applications*, we find that FINRA Rules 12203(a) and 13203(a) are, and were applied, consistent with the Exchange Act's purposes. The Exchange Act requires that FINRA's rules be designed "to protect investors and the public interest."[18] The order approving the predecessors to FINRA Rules 12203(a) and 13203(a) explained that giving FINRA the power to deny access to its arbitration forum under certain circumstances would "allow[] it to focus on the cases that are appropriately in the forum," which "in turn, should promote the efficacy and efficiency of the arbitration forum in processing its claims."[19] And "enhanc[ing] the effectiveness of the arbitration process . . . furthers the public interest and the protection of investors."[20] The Director's application of those rules in Young's case was consistent with these purposes because denying access to the FINRA arbitration forum for cases that are not appropriately in the forum enhances the effectiveness of the forum.[21]

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Accordingly, we dismiss the application for review. An appropriate order will issue.[22]

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

Vanessa A. Countryman
Secretary

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18 Exchange Act Section 15A(b)(6), 15 U.S.C. § 78*o*-3(b)(6).

19 *Order Approving Proposed Rule Change to Amend NASD Arbitration Rules for Customer Disputes and NASD Arbitration Rules for Industry Disputes*, Exchange Act Release No. 55158, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007).

20 *Consol. Arb. Applications*, 2023 WL 2805323, at *8 (alterations in original) (quoting *Perpetual Sec., Inc*., Exchange Act Release No. 48433, 2003 WL 22056640, at *3 (Sept. 3, 2003)).

21 *See id.* Although Young also states in his opening brief that he was denied due process, he does not explain this argument. Accordingly, we find that he has forfeited any due process or procedural fairness arguments. *See* Rule of Practice 420(c), 17 C.F.R. § 201.420(c) ("Any exception to a determination not supported in an opening brief that complies with [Rule] 450(b) may, at the discretion of the Commission, be deemed to have been waived by the applicant."); Rule of Practice 450(b), 17 C.F.R. § 201.450(b) ("Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant.").

22 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. 101273 / October 8, 2024

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JAMES THOMAS YOUNG

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 James Thomas Young is dismissed.

By the Commission.

Vanessa A. Countryman
Secretary