

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 104114 / September 29, 2025

Admin. Proc. File No. 3-21503

In the Matter of the

JOSEPH SYLVESTER STURNIOLO

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 him access to its arbitration forum to arbitrate a claim for expungement of customer dispute information from the Central Registration Depository. *Held*, the action is set aside and FINRA is directed to grant associated person access to its arbitration forum.

APPEARANCES:

Michael Bessette and William Bean of HLBS Law for Joseph Sylvester Sturniolo.

Michael Garawski, Megan Rauch, Michael M. Smith, and Ashley Martin for FINRA.

Appeal filed: June 21, 2023
Last brief received: Oct. 18, 2023

Joseph Sylvester Sturniolo, an associated person of a FINRA member firm, seeks review of a FINRA action that denied him access to its arbitration forum as to a request to expunge certain customer dispute information from FINRA’s Central Registration Depository (“CRD”). FINRA argues that Sturniolo’s claim was properly denied as inappropriate for arbitration because Sturniolo had already unsuccessfully sought to expunge that information in a state-court action. For the reasons below, we set aside FINRA’s action and direct FINRA to grant Sturniolo access to its arbitration forum.

I. Background

Sturniolo has worked in the securities industry since 1983. As relevant here, one of Sturniolo’s customers filed a complaint against him and his former firm, First Allied Securities, Inc., in 2002. Sturniolo and First Allied eventually settled that claim, and information about that settlement was 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 The CRD cannot be accessed by the general public.² However, FINRA provides a free online tool, called BrokerCheck, which displays some of the CRD’s information, including customer dispute information, and is available at <http://brokercheck.finra.org>.³

Associated persons and their firms generally may use FINRA arbitration to seek to expunge customer dispute information from the CRD.⁴ FINRA arbitrators must follow certain procedures and apply certain standards when expunging customer dispute information.⁵ After obtaining an arbitration award granting expungement relief, one must then obtain a court order confirming that award.⁶ However, the Director of FINRA Dispute Resolution Services can also deny access to FINRA’s arbitration forum if the Director determines that “the subject matter of

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 See *id.*

³ 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).

⁴ See FINRA Rule 2080.

⁵ FINRA Rules 12805, 13805. These rules have been amended since Sturniolo filed his statement of claim in April 2023, but we refer to the rules that existed before the amendments, unless otherwise noted.

⁶ See FINRA Rule 2080(a)-(b); *infra* note 9 and accompanying text.

the dispute is inappropriate” based on FINRA’s purposes and the intent of the relevant FINRA Arbitration Code.⁷

Here, Sturniolo first sought to expunge the 2002 customer dispute information from the CRD in April 2018 by filing a statement of claim in FINRA’s arbitration forum. In October 2018, a FINRA arbitrator issued an arbitration award that denied Sturniolo’s expungement request. In March 2020, Sturniolo filed a petition to vacate that award in a state court in Broomfield, Colorado. He argued that the arbitrator had “manifested a disregard for the law and exceeded his powers,” in part on the ground that the underlying customer complaint allegedly lacked merit and that Sturniolo did nothing wrong. The court granted Sturniolo’s request to vacate the arbitration award without explanation on May 22, 2020.

After the Broomfield court vacated the arbitration award denying his first attempt at expungement, Sturniolo filed another statement of claim in FINRA’s arbitration forum in June 2020. FINRA issued a letter to Sturniolo later that month, denying his use of the forum as “not eligible for arbitration” and, without further explanation, closing the case “without prejudice.”

In July 2020, Sturniolo filed a state-court complaint against FINRA in Denver, Colorado, again seeking to expunge the customer dispute from the CRD. In May 2022, the Denver court granted FINRA’s cross-motion for summary judgment, finding that Sturniolo failed to state a cause of action under Colorado law and, independently, that the doctrines of issue preclusion and laches barred Sturniolo’s expungement request against FINRA.

On April 28, 2023, Sturniolo filed another statement of claim in FINRA’s arbitration forum, again seeking to expunge the customer dispute from the CRD. On May 22, 2023, the Director of FINRA Dispute Resolution Services issued a letter reciting the procedural history of the case and denying use of the forum.

Sturniolo subsequently filed this application for review of FINRA’s denial.

II. Analysis

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.⁸ We conclude here that FINRA’s decision denying Sturniolo access to its arbitration forum was not in accordance with its rules.

⁷ 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”). These rules have also been amended since Sturniolo filed his statement of claim, but we refer to the rules that existed before these amendments, unless otherwise noted.

⁸ 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.*

FINRA argues that the Denver court's final judgment against Sturniolo precludes him from bringing his expungement claim again in arbitration because FINRA Rule 2080 requires a person to choose between pursuing expungement *either* in court *or* in arbitration. But that rule contains no such limitation. It instead provides that, to expunge customer dispute information from the CRD, an associated person must ultimately obtain a court order that either (1) directs such relief itself or (2) confirms an arbitration award that contains such relief.⁹ In doing so, the rule does not specify that an associated person can choose only one of those paths. Indeed, FINRA recently adopted a rule that *does* do that: it forbids a person from requesting expungement of customer dispute information in arbitration if a court previously denied such a request—but that rule was not in effect when Sturniolo filed his April 2023 statement of claim.¹⁰

FINRA somewhat similarly argues that claim preclusion prevents Sturniolo from bringing his latest expungement claim in FINRA arbitration because the Denver court already denied his expungement request. But claim preclusion applies when there is an identity of parties for a particular claim.¹¹ That identity of parties does not exist here because Sturniolo brought his Denver court case against FINRA, while his arbitration claim is against his former employer, First Allied.

FINRA further argues that Sturniolo's claim is inappropriate for arbitration because it collaterally attacks the Denver court's judgment. As support, FINRA cites the Commission's decision in the *Consolidated Arbitration Applications*, in which the FINRA Director had denied forum access for attempts to expunge certain customer-dispute arbitration awards from the CRD.¹² But we do not find that case relevant here. Applicants in the *Consolidated Arbitration Applications* had sought to expunge final customer-dispute arbitration awards from the CRD by alleging that the customers' complaints underlying those final awards were "patently false," factually impossible, or clearly erroneous. The Commission affirmed the Director's conclusion that such claims necessarily amounted to impermissible collateral attacks under FINRA's rules

⁹ See FINRA Rule 2080(a) (providing that customer dispute information can be expunged only through a court order directing expungement or confirming an arbitration award granting expungement).

¹⁰ See FINRA Rule 12805(a)(1)(B) (post-October 2023 version)..

¹¹ Cf. *Canady v. Allstate Ins. Co.*, 282 F.3d 1005, 1014 (8th Cir. 2002) (noting that one element of claim preclusion is whether "both cases involved the same cause of action and the same parties"); *Jarrard v. Se. Shipbuilding Corp.*, 163 F.2d 960, 960-61 (5th Cir. 1947) (rejecting an attempt by plaintiffs to bring a case in federal court after winning a judgment involving the same facts against the same defendants in state court).

¹² *Consolidated Arbitration Applications*, Exchange Act Release No. 97248, 2023 WL 2805323, at *4-5 (Apr. 4, 2023).

because the applicants' claims sought to challenge the underlying merits of final arbitration awards.¹³

Here, as FINRA concedes, Sturniolo is not seeking to challenge the merits of a final arbitration award or expunge such an award from the CRD.¹⁴ Sturniolo is instead seeking to expunge information about a customer dispute, which FINRA's rules expressly allow one to do in FINRA's arbitration forum.¹⁵ Although the Denver court judgment's validity and relevance could become an issue for the arbitrator to decide if a party properly raises the Denver court's proceedings, it is premature to say whether that will necessarily be the case (and we express no view on the merits of any such attempt by a party to use the Denver court case in a subsequent arbitration).¹⁶

We also reject FINRA's interpretation of the 2020 denial letter's statement that Sturniolo's expungement request was closed "without prejudice." FINRA argues that this language allowed Sturniolo to refile an expungement claim *only* in court, but not in FINRA's arbitration forum again. Nothing in FINRA's 2020 denial notice indicates such a limitation. Nor is the common understanding of "without prejudice" so limited.¹⁷

* * *

We therefore conclude that the Director's denial was not in accordance with FINRA's rules. Accordingly, we set aside FINRA's action and direct it to grant Sturniolo access to its arbitration forum to pursue his April 28, 2023, arbitration statement of claim. Sturniolo also requests that we order FINRA to apply the pre-October 2023 FINRA rules regarding expungement in his arbitration. But in directing that FINRA grant him access to the arbitration forum, we decline Sturniolo's request that we express a view on which FINRA rules the

¹³ See *Consolidated Arbitration Applications*, 2023 WL 2805323, at *4 (explaining that, because FINRA's arbitration codes specify that "[u]nless the applicable law directs otherwise, all awards rendered under the Code are final and are not subject to review or appeal," the Director could properly conclude that a collateral attack on the underlying merits of such an arbitration award would both undermine the award's finality and improperly subject it to review).

¹⁴ See *Cynthia Mary Couyoumjian*, Exchange Act Release No. 97179, 2023 WL 2596892, at *2 (Mar. 21, 2023) (holding that it was inconsistent with FINRA's rules to deny use of the arbitration forum as to an expungement claim simply because a vacated prior arbitration award denied that claim).

¹⁵ See *supra* note 4 and accompanying text.

¹⁶ Cf., e.g., *Blonder-Tongue Lab'ys, Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 350 (1971); *Valley View Angus Ranch, Inc. v. Duke Energy Field Servs., Inc.*, 497 F.3d 1096, 1106 (10th Cir. 2007).

¹⁷ See, e.g., *Dismissed Without Prejudice*, *Black's Law Dictionary* (12th ed. 2024) (defining "dismissed without prejudice" to mean "removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim").

arbitrator should apply in the underlying arbitration or any other issue related to the merits of Sturniolo's expungement request.¹⁸

An appropriate order will issue.¹⁹

By the Commission (Chairman ATKINS and Commissioners PEIRCE, CRENSHAW, and UYEDA).

Vanessa A. Countryman
Secretary

¹⁸ Cf. *Couyoumjian*, 2023 WL 2596892, at *4 (noting that, in directing FINRA to grant the applicant access to its arbitration forum, "we express no opinion on the underlying merits of [the applicant's] requests for expungement").

¹⁹ 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
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JOSEPH SYLVESTER STURNIOLO

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 Joseph Sylvester Sturniolo's request for access to its arbitration forum be, and hereby is, set aside, and it is further

ORDERED that FINRA grant Joseph Sylvester Sturniolo access to its arbitration forum.

By the Commission.

Vanessa A. Countryman
Secretary