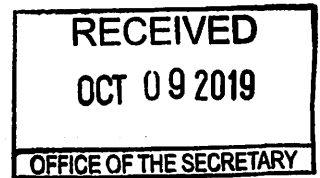


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**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application Of

DUSTIN AIGUIER

For Review of Action Taken By

FINRA

File No. 3-19216

**AIGUIER'S REPLY TO FINRA'S RESPONSE TO APPLICANT'S INITIAL BRIEF ON
THE ISSUE OF JURISDICTION**

INTRODUCTION

1. On June 21, 2019, Dustin Aiguier ("Aiguier") filed an application for review with the Commission seeking review of the determination by the Director of FINRA (the "Director") in its refusal to submit a motion filed by Aiguier to the arbitration panel. The Director refused to forward the motion claiming that the submission did not comply with FINRA Rule 13905.

2. The Commission requested that the parties address whether it has jurisdiction to consider Aiguier's application for review.

3. On August 20, 2019, Aiguier submitted his Brief on Commission's Jurisdiction Over This Appeal ("Aiguier's Brief"), asserting that the Commission does have jurisdiction to consider this case.

4. On September 23, 2019, FINRA submitted its Response to Applicant's Initial Brief on the Issue of Jurisdiction ("FINRA's Response").

5. Aiguier, by and through counsel, now timely submits his Reply to FINRA's Response, and asserts that the Commission does have jurisdiction over this appeal.

ARGUMENT

6. Aiguier agrees with FINRA in one respect: that the Commission's authority to review FINRA's actions is governed by Section 19(d) of the Exchange Act. At issue here is the Commission's authority to review the action of FINRA where FINRA's action "prohibits or limits any person in respect to access to services offered by such organization". 15 U.S.C. § 78s(d)(1), (2). Contrary to FINRA's assertion in its Response, the fact that the Commission may not have heard an action identical to the present case has no bearing on whether the Commission is in fact granted authority of review pursuant to the Exchange Act; a matter of first impression necessarily needs to be heard for the first time.

A. FINRA prohibited or limited Aiguier's access to services.

7. FINRA asserts that Aiguier's application for review is "essentially ask[ing] the Commission to order FINRA to permit him to re-arbitrate his claims." (FINRA's Response, pg. 5). FINRA mischaracterizes the issue here. Mr. Aiguier is not asking to re-arbitrate his claims; he is asking for an order for FINRA to not *impede* the "neutral" forum they are supposed to provide for brokers, and to permit Aiguier to submit his motion to the arbitration panel for the *panel's* consideration. The Director should not be making a final determination in such a case, and FINRA does not dispute in their Response Aiguier's assertion that the Director's action here constituted a final determination.

8. FINRA claims that its determination to deny Aiguier access to the FINRA arbitration forum "does not qualify as a prohibition or limitation of access to FINRA services" as it is not "a fundamentally important service that is central to the function of FINRA." (FINRA's

Response, pg. 6). FINRA cites several instances where the Commission has held that services were central to its operation as an SRO (i.e. terminating a member's market maker status; denying a member's request to improve communications with a trading floor; delisting the securities of an issuer), then contends that, because FINRA did not deny access to similar FINRA services, it therefore did not deny Aiguier access to a fundamentally important service central to its function. (FINRA's Response, pg. 6). However, this is not an exhaustive list of services that are central to FINRA's function. The fact that there are other services that are central to FINRA's function has no bearing on whether the circumstances of this case are central to FINRA's function.

9. The service that FINRA denied Aiguier access to in this case is a fundamentally important service central to its function. FINRA describes on its website that:

To accomplish our dual mission of investor protection and **market integrity**, FINRA performs the following activities every day:

...

5. Resolve securities disputes

... we administer the largest forum specifically designed to **resolve securities-related disputes** between and among investors, securities firms and individual brokers.

Our dispute resolution forum is the largest in the country for the securities industry, handling nearly 100 percent of securities-related arbitration[.]¹

Here, FINRA clearly states that resolving securities disputes, including the industry dispute Aiguier filed, is one of the five activities FINRA performs in order to accomplish **their mission**. It defies common sense for FINRA to then contend that FINRA arbitration is not fundamentally important or central to their function, especially since they handle nearly 100 percent of securities-related arbitrations. FINRA also proudly touts that it "provides the first line of oversight for broker-

¹ <http://www.finra.org/about/what-we-do>, emphasis added.

dealers and the first line of defense for investors ... [and] regulates both the firms and professionals selling securities[.]”² Part of the regulation, oversight, and defense provided by FINRA is the CRD repository and operation of the BrokerCheck website. FINRA claims that it had 629,847 registered representatives as of 2018³ and requires that BrokerCheck be a readily apparent reference and hyperlink on the firm’s initial website or any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors.⁴ With the pervasiveness of the BrokerCheck website, and the information contained therein, and because FINRA requires disclosure of most customer disputes regardless of their merit, an expungement process was specifically set up to ensure the integrity of the system and to allow the hundreds of thousands of representatives to remove claims that are factually impossible, clearly erroneous, false, or where they were not involved with the allegations made. See FINRA Rule 2080. FINRA’s Rule 2080 specifically allows *arbitrators* to determine whether expungement is appropriate after a hearing on the merits. Additionally, as part of any arbitration claim, there are rules of discovery at play. Where a party fails to comply with the rules of discovery, the FINRA Code of Arbitration Procedure for Industry Disputes outlines appropriate remedies *that the panel* may issue. See FINRA Rule 13511. Therefore, a request for expungement of information from the repository and a request for sanctions for a broker-dealer’s violation of the rules of discovery during that proceeding surely resides within FINRA’s oversight of the securities industry and is a fundamental aspect of their mandate and central to their function.

10. FINRA states that the proper forum to “*challenge, modify, or correct* the award denying expungement is in court through a motion to vacate.” (FINRA’s Response, pg. 8,

² <http://www.finra.org/industry/oversight>

³ <http://www.finra.org/newsroom/statistics>

⁴ FINRA Regulatory Notice 15-50 (June 6, 2016); FINRA Rule 2210.

emphasis added). FINRA also provides a litany of cases and cites the FAA for their assertion that the Commission cannot overturn or change an arbitrator's decision, and that Aiguier is attempting to "insert the Commission into an appellate-review role." (FINRA's Response, pg. 9-12). Aiguier agrees with the law FINRA cites. However, again, FINRA completely mischaracterizes the issue here in its application of the law to the facts of this case. Aiguier is not attempting to "challenge, modify, or correct the award," nor is he seeking to "overturn or change an arbitrator's decision." Aiguier is also not seeking the Commission's review of the facts or legal aspects of his arbitration case because of a "mere dissatisfaction" with the award, as FINRA erroneously claims. (FINRA's Response, pg. 12). Aiguier is seeking to present to the arbitration panel the fact that the respondent, after being ordered to provide certain documents and affirming that they, did not comply with the discovery requirements and the panel's order, and to request an appropriate remedy. Apparently FINRA cannot distinguish the difference between a motion for a new trial filed in the original forum (or in this case, a motion for sanctions and to supplement the record) and an appeal.

11. FINRA's action in refusing to submit a motion to the arbitration panel denied or limited access Aiguier's access to a fundamentally important service central to FINRA's function, and thus, the Commission has jurisdiction to hear this case.

B. FINRA's "B" Section is not applicable here.

12. FINRA argues in its Response the other three categories of jurisdictional authority provided to the Commission pursuant to Section 19(d) of the Exchange Act (i.e. that they did not deny Aiguier membership or participation, did not impose a disciplinary sanction, and did not bar Aiguier from becoming associated with a member). Aiguier will not address these arguments, because as he said in his initial Brief (pg. 5, FN 3), these sections of the Exchange Act are not applicable here.

CONCLUSION

13. The Commission has jurisdiction to review the action by the Director of FINRA as this action prohibits or limits Aiguier's access to services offered by FINRA.

Dated: October 4, 2019

Respectfully submitted,



Michael Bessette, Esq.
Senior Attorney
T: (720) 432-6546
E: michael.bessette@hlbslaw.com

HLBS Law
9737 Wadsworth Pkwy, Ste. G-100
Westminster, CO 80021

CERTIFICATE OF SERVICE

I, Olivia Peterson, on October 4, 2019, served the original and three copies of Mr. Aiguier's Reply to FINRA's Response to Applicant's Initial Brief on the Issue of Jurisdiction on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090
Fax: 202-772-9324

(BY FAX) I caused the documents to be sent to the persons at the fax number listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(BY MAIL) I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

(STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

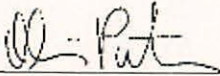
On this date, I also served the original and three copies of Mr. Aiguier's Reply to FINRA's Response to Applicant's Initial Brief on the Issue of Jurisdiction on:

Megan Rauch
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
Email: nac.casefilings@finra.org

(BY EMAIL) I caused the documents to be sent to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(BY MAIL) I caused the documents to be sent by US Certified Mail to the persons listed above. I did not receive notice or indication from the US Postal Service that the delivery would be unsuccessful.

(STATE) I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.



Olivia Peterson
9737 Wadsworth Parkway
Westminster, CO 80021