

VIA WEB SUBMISSION

May 22, 2023

Vanessa Countryman, Secretary
J. Matthew DeLesDernier, Assistant Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Emergency Comment Submission - File Number SR-FINRA-2022-024

Dear Secretary Countryman and Assistant Secretary DeLesDernier:

I am an attorney who represents registered representatives seeking to expunge inaccurate customer dispute disclosures from the CRD system. I write to express my concerns about FINRA's proposed rule changes.

I submitted a comment letter and two addendums on April 7, 2023, and a comment letter on May 8, 2023. The comment letters contained allegations of numerous Constitutional violations by FINRA. In fact, I had to just stop listing Constitutional violations because I needed to sleep as I had a hearing the following morning as was not even able to better organize the letter.

Amazingly, it appears that FINRA seems to be engaged in retaliatory activity against my clients. More amazingly, FINRA's official position when confronted about the activity and when advised that it likely violates the Constitution, is that it is not subject to the Constitution because it is a private entity. A copy of the emails are attached hereto.

In fact, that is exactly what FINRA's position is. As I have had multiple problems with FINRA simply stonewalling when faced with any form of public accountability, I made sure that I made the Director of FINRA Dispute Resolution, FINRA's Chief Legal Officer, the President of FINRA, as well as most, if not all, of the other attorneys or relevant executives listed on FINRA's website were aware of the violations.

I only received one response from FINRA. It was from Ms. Suzanne Duddy, Assistant General Counsel. My response was also provided to the Chief Legal Officer. FINRA's response to being advised that its immunity when engaged in regulatory activity does not apply when FINRA exercises the federal powers delegated to it by federal statute to engage in retaliation, is literally that it is not subject to the Constitution. Here is the text of the email so you don't have to turn to it.

On May 15, 2023, at 3:13 PM, Duddy, Suzanne <Suzanne.Duddy@finra.org> wrote:

Mr. Galvan,

Your inquiry has been forwarded to my attention. I understand from your communications to CRED that you are threatening to sue FINRA for damages and liability in connection with the denial of waiver letter that you received in the above matter. The denial

letter only requires that FINRA be named in any action seeking to confirm the underlying arbitration award, and that FINRA has not waived that requirement pursuant to FINRA Rule 2080. The denial of waiver letter does not necessarily mean that FINRA will oppose confirmation of the Award in that action or seek to vacate the award, only that FINRA should be named in the action. FINRA will assess your client's specific petition and its response to same when it is served with that case. FINRA Rule 2080 explicitly states that "FINRA may waive the obligation to name FINRA as a party" and denying or granting waiver requests is within FINRA's discretion. The Rule does not guarantee that FINRA will waive the requirement to be named in actions to confirm arbitration awards, nor does it require FINRA to provide an explanation for its decision.

As I am sure you are aware, **FINRA is not a state actor and thus is not subject to constitutional claims and is protected from damages by its regulatory and forum immunity. Thus, I do not believe it is necessary to continue to threaten FINRA in connection with this matter. When you file the confirmation action, please serve FINRA's statutory agent CSC.**

Thank you,

Suzanne Duddy

Suzanne E. Duddy
Assistant General Counsel
FINRA
Office of General Counsel
1735 K St. NW
Washington DC 20006
(202) 728-8378
Suzanne.Duddy@finra.org

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That is an amazing position for an entity that only exists because of federal statute and exercises Constitutional power by delegation. But for the Constitution, FINRA would never have existed and would not continue to exist. Congress is a direct creation of the Constitution. The SEC is a Constitutional Construct as is the entire executive branch of the U.S. Government from which the Constitutional power FINRA exercises is delegated. To take the position that it is not subject to the Constitution is ludicrous. Congress, which was created by the Constitution, could simply overturn the federal statutes that are the basis for FINRA's existence and power. One cannot be more subject to the Constitution. But more amazingly is that FINRA's position is that when it is exercising the Constitution powers that have been statutorily delegated to it from a state actor, it is not subject to the Constitution.

Additionally, Congress is a creation of the Constitution. Congress cannot enact federal statutes that violate the Constitution. If a statute's position is that it is not subject to the Constitution. Especially, when exercising delegated Constitutional power, then that statute itself is unconstitutional and rogue. I will remind

the Commissioners of the oath they swore when We The People delegated our collective power to them through the Constitution that our entire society is built on.

I, [name], do **solemnly swear (or affirm) that I will support and defend the Constitution of the United States** against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”

The very first thing that each of you swore is to support and defend the Constitution. You have an affirmative duty to ensure that a statutorily created entity exercising Constitutional powers delegated through you, that you are statutorily responsible for supervising, is not using those Constitutional powers for unconstitutional purposes because it does not think it is subject to the Constitution.

The Commission should place the proposal giving FINRA even more power to violate the Constitution on hold and exercise its affirmative duty to supervise FINRA and ensure they are not exercising that power unconstitutionally. And to advise FINRA that it is not in fact above the Constitution any more than the Commission itself from which FINRA derives its Constitutional power is not above the Constitution.

In my comment letter, I even stated that I had to stop making Constitutional arguments because there were so many. I did not understand how an entity exercising Constitutional power could be engaged in so many Constitutional violations when I was drafting the letter. But it makes sense now that FINRA has taken the position that it is not subject to the Constitution when it is exercising Constitutional powers that have been delegated to it.

It is also worth noting that in this exact case, I had to address additional issues where FINRA seems to think it is above the law and Constitution. Please see the attached pleading also.

I urge the SEC to consider whether it should authorize more Constitutional power to a private entity that has taken the position that it is not subject to the Constitution when exercising those powers before investigating that position itself. I hope you will take these arguments into account when considering the proposed rule changes.

Respectfully submitted,

/s/ James P Galvin
James P. Galvin, Esq.

VIA FINRA DR PORTAL

April 1, 2023

Lisa Lasher
FINRA Dispute Resolution Services
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, Florida 33486

Re: [REDACTED] Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Dear Ms. Lasher:

Please advise whether FINRA has decided with regards to Claimant's Motion for Reconsideration regarding his objection to producing confidential records, including the audio recording of the hearing, to the non-party participant customer. If FINRA has not yet decided or had decided, Claimant requests that he be provided with notification when the decision has been made as to the decision. Additionally, should FINRA decide to produce the confidential records to the non-party participant customer, Claimant requests that FINRA provide the legal basis it is relying on for the determination and at what level the decision was made (i.e. the case administrator, regional director, national director, Chief Legal Officer, or Board of Directors).

As the initial position taken by FINRA in response to Claimant's objection would seemingly violate both federal and state law, U.S. Supreme Court and Florida Supreme Court precedent, and is not explicitly allowed under FINRA rules, it is clearly relevant what FINRA is basing its decision on. It would also seemingly be illogical for a decision that would violate these laws and precedents be made at a level lower than the national Director, Chief Legal Officer, or Board of Directors, which is the reason the documentation was provided to the national Director and Chief Legal Officer directly.

A decision to produce the confidential records without a basis in law that would appear to violate federal and state law, and U.S. Supreme Court and Florida Supreme Court precedent, could give rise to actions in both federal and state court. Federal courts could potentially have subject-matter jurisdiction as the causes of action would address a question of federal law as the U.S. Supreme Court has directly issued precedent with regards to the Federal Arbitration Act ("FAA") and its interpretation, and as the federal question shares a common nucleus of operative fact with the state law claims under the Florida Arbitration Code and related Florida Supreme Court decision, then the court could exercise supplemental jurisdiction over the state law claims as well. In addition to jurisdiction by a state court.

As the parties will suffer irreparable harm if FINRA were to disclose the confidential records, such as damage to reputation or business. Numerous causes of action court arise against FINRA based on such a decision, including, but not limited to, breach of contract, as FINRA's rules and agreements with the parties provide for confidentiality of the proceedings; violation of the FAA and state arbitration acts; breach of the implied covenant of good faith and fair dealing; negligence; violation of the Florida Uniform

Trade Secrets Act; breach of fiduciary duty; etc. It could also give rise to common law causes of action, including, but not limited to breach of contract; breach of fiduciary duty; invasion of privacy; defamation; etc. The parties could potentially seek damages for any reputation or monetary harm suffered because of the disclosure.

Given the clear potential violations of federal and state law, and U.S. Supreme Court and Florida Supreme Court precedent, and given the potential causes of action and damages potentially available to the parties in either federal or state court, it would seemingly be illogical that such a decision would be made at a level lower than one of those previously discussed and/or without a basis in law and/or precedent.

It is also important to note that the court decisions, opinions of Member(s) of Congress, within the industry, and the public at large, with regards to the neutrality of FINRA's Dispute Resolution Forum, any decision that so clearly could violate of federal and state law, and U.S. Supreme Court and Florida Supreme Court precedent, would only provide additional strength to the position regarding the forum's neutrality.

Very truly yours,

/s/ James P Galvin
James P. Galvin, Esq.
Galvin Legal, PLLC

Attorney for Plaintiff

Cc: Katelyn Wilson, Esq. (Via FINRA DR Portal)

From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:18 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



Ms. Duddy,

I am aware. And I am also aware that FINRA is a private entity that enjoys qualified immunity through statutory delegation. I understand FINRA will not necessarily oppose the confirmation—what would be the basis. But there is no basis for denying the waiver. None at all. If it is your normal process to grant them in basic straight forward cases where there is no basis for denial, then why would you do it? If you cannot provide an actual basis, then that is retaliation. You may not be a state actor. But it is only when you are engaged in regulatory activity that you have immunity. If you are engaged in retaliation, then that is not regulatory activity. Please provide me with the basis for the denial.

Best,

James P. Galvin, Esq.
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Mobile: (404) 451-6742
Facsimile: (800) 405-5910
<https://www.galvinlegal.com>

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As I am sure you are aware, FINRA is not a state actor and thus is not subject to constitutional claims and is protected from damages by its regulatory and forum immunity. Thus, I do not believe it is necessary to continue to threaten FINRA in connection with this matter. When you file the confirmation action, please serve FINRA's
statutory agent CCO

statutory agent CSC.

Thank you,

Suzanne Duddy

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From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:39 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



Ms. Duddy,

As it states on FINRA's website:

... under federal and state laws, there are limited grounds on which a court may hear a party's appeal on an award. Specifically, the law permits a district court to vacate or overturn an arbitration award if it finds that:

the award was procured by corruption, fraud, or undue means;
there was evident partiality or corruption in the arbitrators;
the arbitrators were guilty of misconduct in refusing to postpone the hearing, even in light of sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced;
the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made;
the arbitrators disregarded a clearly defined law or legal principle applicable to the case before them (Manifest Disregard of the Law);
or
there is no factual or reasonable basis for the award (Complete Irrationality).

Not a single one of those criteria applies. Two Rule 2080 affirmative findings were made. All Rule 13805 and procedural requirements have been met. Not a single reason exists for the denial. If it is FINRA's standard procedure to grant waivers in those situation, regardless of whether the rules says it "may" grant the waiver, then it is evident that the waiver was denied for reasons other than the entire purpose of confirmations. There is no basis for FINRA to vacate this award. There is no basis to deny the waiver except to create additional work and problems in retaliation because it is upset that I pointed out the problems with its current expungement process in great detail in a comment letter to a rule change request. You can talk about immunity all day. But retaliatory conduct is not regulatory activity, which is what your immunity covers. And unless you can provide an actual basis for denying the waiver request, then whether this is retaliation or not is a question of fact for a jury to consider as retaliation is not regulatory activity.

Please review the denial. See for yourself if there is any actual basis. If there is, then just tell me and I will go through the additional hoops to confirm the award. But if there is no basis, then the denial needs to be overridden and the waiver granted. Thank you!
Best,

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From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:57 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



I understand all of that. But if there is no basis for the denial, then that is irrelevant. It creates additional work and costs. If there is absolutely no basis to deny the waiver, regardless of what you are permitted to do, and your standard procedure is to grant the waiver when absolutely no basis exists for denial, then I find it very difficult to see how you defend the denial. And whether you are required to provide the reason for the denial under the rules, you have provided it to me before—Karen has. If you have a legitimate reason for denying the waiver, then you should have no problem telling me the basis. Refusing to tell me the basis just further supports my argument that this is entirely retaliatory.

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On May 15, 2023, at 3:54 PM, Duddy, Suzanne <Suzanne.Duddy@finra.org> wrote:

Mr. Galvin,

As the underlying arbitration Award itself states: “Mr. [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.” The Award also states that “Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.” Thus, confirmation of the arbitration award is required whether FINRA granted waiver or not. The only “additional” hoop that FINRA’s denial of waiver requires is that you name and serve FINRA in your confirmation action. That is the only effect of the waiver denial. I hope this resolves your concerns,
Suzanne Duddy

From: James P. Galvin <james@galvinlegal.com>
Sent: Monday, May 15, 2023 3:40 PM
To: Duddy, Suzanne <Suzanne.Duddy@finra.org>
Subject: Re: [REDACTED]

WARNING: External Sender! Exercise caution with links, attachments and requests for login information.

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Mr. Galvan,

Your inquiry has been forwarded to my attention. I understand from your communications to CRED that you are threatening to sue FINRA for damages and liability in connection with the denial of waiver letter that you received in the above matter. The denial letter only requires that FINRA be named in any action seeking to confirm the underlying arbitration award, and that FINRA has not waived that requirement pursuant to FINRA Rule 2080. The denial of waiver letter does not necessarily mean that FINRA will oppose confirmation of the Award in that action or seek to vacate the award, only that FINRA should be named in the action. FINRA will assess your client's specific petition and its response to same when it is served with that case. FINRA Rule 2080 explicitly states that "FINRA may waive the obligation to name FINRA as a party" and denying or granting waiver requests is within FINRA's discretion. The Rule does not guarantee that FINRA will waive the requirement to be named in actions to confirm arbitration awards, nor does it require FINRA to provide an explanation for its decision.

As I am sure you are aware, FINRA is not a state actor and thus is not subject to constitutional claims and is protected from damages by its regulatory and forum immunity. Thus, I do not believe it is necessary to continue to threaten FINRA in connection with this matter. When you file the confirmation action, please serve FINRA's statutory agent CSC.

Thank you,

Suzanne Duddy

Suzanne E. Duddy
Assistant General Counsel
FINRA
Office of General Counsel
1735 K St. NW
Washington DC 20006
(202) 728-8378
Suzanne.Duddy@finra.org

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From: James P. Galvin james@galvinlegal.com
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 12:27 PM
To: Weinstein, Karen Karen.Weinstein@finra.org



Ms. Weinstein,

What is the reason that FINRA is denying the waiver request? The Panel made an affirmative finding that one of the criteria of Rule 2080 was met. All of the requirements of the rules were met. The customer even participated in the hearing. It was a 3 hour and 45 minute hearing because the customer is an attorney who actually argued the entire case. It makes no sense that this waiver would be denied. Please let me know the reason. Thank you!

Best,

James P. Galvin, Esq.
GALVIN LEGAL, PLLC
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Mobile: (404) 451-6742
Facsimile: (800) 405-5910
<https://www.galvinlegal.com>

<https://www.galvinlegal.com/attorney/james-p-galvin>

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On May 15, 2023, at 12:16 PM, Weinstein, Karen <Karen.Weinstein@finra.org> wrote:

JOSEPH C [REDACTED], CRD# 5326755
FINRA Arbitration Case #: [REDACTED]
Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Galvin:

Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s).

Karen Weinstein, Associate Principal Analyst
Operations Policy Implementation
Credentialing, Registration, Education and Disclosure (CRED)
240-386-4788

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<FINRA-[REDACTED]-[REDACTED]-Denial Letter.pdf>

From: James P. Galvin james@galvinlegal.com
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 12:32 PM
To: Weinstein, Karen Karen.Weinstein@finra.org



In fact, the customer had a positive 12%+ gain in his account. It was a retaliatory complaint because the RR fired the customer. The arbitrator is also an attorney. There is no basis that this waiver would be denied. Is this retaliation because of the comment letter I submitted to the SEC? That is the only reason I can come up with unless you can provide me a basis under the rules and the FAA for why this would be denied. And I will be confirming this in Florida myself. Retaliation by a regulator is an extreme action. And if there is no basis for the denial, then there is no alternate explanation.

James P. Galvin, Esq.
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FINRA Arbitration Case #: [REDACTED]
Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Galvin:

Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s).

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<FINRA-[REDACTED]-[REDACTED]-Denial Letter.pdf>

From: James P. Galvin james@galvinlegal.com
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 12:47 PM
To: Weinstein, Karen Karen.Weinstein@finra.org



Ms. Weinstein,

So, an affirmative finding was made that one of the criteria in Rule 2080 was met.
There are no time issues.
There is no basis for a motion to vacate. There was clearly no arbitrator bias.
The rules were followed perfectly. The customer attorney even participated and argued the matter for 3 hours and 45 minutes in front of the attorney arbitrator.
The customer had a 12%+ return on the account.
No unsuitable investments or strategies were recommended.
The customer was upset that the RR fired the customer because the customer was such a problem. And in fact the customer continued being a problem and Merrill Lynch subsequently fired the customer.

There is no basis for a motion to vacate.
There is no basis for FINRA to deny the waiver.
If there is a basis that I am not seeing, then I need to be informed of it.
Otherwise when I seek confirmation of the Award I will ask for monetary and other damages against FINRA.
Because engaging in retaliatory behavior is not regulatory activity and is a basis for putting qualified immunity to the side.

Best,

James P. Galvin, Esq.
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FINRA Arbitration Case #: [REDACTED]
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James Galvin:

Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s).

Karen Weinstein, Associate Principal Analyst
Operations Policy Implementation
Credentialing, Registration, Education and Disclosure (CRED)
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<FINRA-[REDACTED]-Denial Letter.pdf>

From: James P. Galvin james@galvinlegal.com
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 1:00 PM
To: Weinstein, Karen Karen.Weinstein@finra.org



Ms. Weinstein,

The arbitrator who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

NRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver. See Notice to Members 04-16.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact has a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC,

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists— which it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc.

Best,

James P. Galvin, Esq.
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JOSEPH C [REDACTED], CRD# 5326755

FINRA Arbitration Case #: [REDACTED]

Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Galvin:


Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s)

named individual(s).

Karen Weinstein, Associate Principal Analyst
Operations Policy Implementation
Credentialing, Registration, Education and Disclosure (CRED)
240-386-4788

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<FINRA-██████████-██████████-Denial Letter.pdf>

From: James P. Galvin james@galvinlegal.com 
Subject: Fwd: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 2:56 PM
To: robert.colby@finra.org



Mr. Colby,

I am writing to you as Chief Legal Officer because it appears that certain parts of the FINRA organization are engaging in unethical, unlawful, and retaliatory conduct. See the attached waiver denial and award. This is actually one of the most straight forward cases I have handled and every rule, procedure, and requirement has been met completely. There is no basis whatsoever for denial of the waiver request. I have tried contacting Stefanie Watkins, Karen Weinstein, and Kara Wright about this. Because I need an answer as to what basis FINRA could possibly have for denying this waiver other than retaliation for the comment letters, the last of which was submitted on May 9, that I have submitted to the SEC in response to the latest rule change request. I need an answer as to the basis for the denial of the waiver.

The arbitrator, who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

All requirements under Rule 13805 have been met.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

FINRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact had a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC.

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc. Thank you!

Best,

James P. Galvin, Esq.
GALVIN LEGAL, PLLC
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Begin forwarded message:

From: James Galvin <james@galvinlegal.com>
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification

Subject: Re: FINRA Rule 2000 Waiver Request Response Notification

Date: May 15, 2023 at 1:33:25 PM EDT

To: "stefanie.watkins@finra.org" <stefanie.watkins@finra.org>, "Weinstein, Karen" <Karen.Weinstein@finra.org>, kara.wright@finra.org

I will also be sending emails one or more times daily until I receive a response to my inquiry as to what the basis of denial is. I intend to provide all of my inquiries, in addition to the comment letter that I just submitted a few days ago to the court when I seek to confirm the Award. I will seek damages. If FINRA has no basis for denying this Award, then it is clear that the conduct is retaliatory in nature. That kind of conduct is not regulatory activity. That kind of conduct is not shielded by qualified immunity. That kind of conduct is not authorized by statute, cannot be authorized by statute, and is actually prohibited by statutes.

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On May 15, 2023, at 1:28 PM, James P. Galvin <james@galvinlegal.com> wrote:

I would like to be very clear. I pointed out a large number of Constitutional violations FINRA's conduct is resulting in. If FINRA would like to test me out in court, then I truly do welcome the opportunity. But I can assure you that FINRA does not want that chance to be based on it taking retaliatory action and harming my client because it is upset that I pointed out is wrongful conduct. Everything has been met in this matter. There is no basis to vacate the award. It makes no sense to deny the waiver, and there is no basis to deny the waiver, except as a retaliatory measure.

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On May 15, 2023, at 1:12 PM, James P. Galvin <james@galvinlegal.com> wrote:

Dear Ms. Watkins.

I am writing to inquire about this denied waiver request. There is no imaginable basis that it would be denied.

The arbitrator who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

FINRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact had a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC,

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—which it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc.

Best,

James P. Galvin, Esq.
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Begin forwarded message:

From: James Galvin <james@galvinlegal.com>
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 1:00:04 PM EDT
To:
"Weinstein, Karen" <Karen.Weinstein@finra.org>

Ms. Weinstein,

The arbitrator who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

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Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

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There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC,

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—which it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc.

Best,

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JOSEPH C [REDACTED], CRD# 5326755

FINRA Arbitration Case #: [REDACTED]

Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Galvin:

Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s).

Karen Weinstein, Associate Principal Analyst
Operations Policy Implementation
Credentialing, Registration, Education and Disclosure (CRED)
240-386-4788

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<FINRA-[REDACTED]-[REDACTED]-Denial Letter.pdf>

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[REDACTED] FINRA-22-0223
Award...23.pdf 8-Bow...tter.pdf
117 KB



From: James P. Galvin james@galvinlegal.com 
Subject: Fwd: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 3:09 PM
To: robert.cook@finra.org
Cc: robert.colby@finra.org, kara.wright@finra.org, Watkins, Stefanie stefanie.watkins@finra.org, Weinstein, Karen Karen.Weinstein@finra.org

Mr. Cook,

I am forwarding this email chain and attachments to you. I do not want to be forwarded to the Ombudsman. I know that office exists. This is not a simple disagreement. This appears to be direct retaliatory conduct. I am ensuring that I notify and request and explanation from FINRA's Chief Legal Officer and President, in addition to the individuals responsible for making the determination because I intend to attach them to the confirmation filing when I discuss FINRA's retaliatory conduct that is not regulatory activity, not authorized by statute—in fact, it is prohibited by statute, is not authority delegated to FINRA by the SEC, and violates the law. And I want to make sure that a record of the CLO and President of FINRA being notified of this.

Best,

James P. Galvin, Esq.
GALVIN LEGAL, PLLC
Toll-Free: (800) 405-5117
Mobile: (404) 451-6742
Facsimile: (800) 405-5910
<https://www.galvinlegal.com>

<https://www.galvinlegal.com/attorney/james-p-galvin>

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Begin forwarded message:

From: "James P. Galvin" <james@galvinlegal.com>
Subject: Fwd: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 2:56:06 PM EDT
To: "robert.colby@finra.org" <robert.colby@finra.org>


Award...23.pdf



May 15, 2023

Galvin Legal PLLC
James P. Galvin, Esq.

James F. Galvin, Esq.

VIA EMAIL: james@galvinlegal.com

JOSEPH C BOWDEN, CRD# 5326755
FINRA Arbitration Case #: 22-02238
Joseph C. Bowden vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Dear Mr. Galvin:

FINRA has determined to deny your request to waive the obligation under FINRA Rule 2080 to name FINRA as a party in any judicial proceeding to confirm the award issued in the above-captioned proceeding. Therefore, pursuant to Rule 2080 you are required to name FINRA as a party in any court action seeking an order to expunge customer dispute information referenced in the above-captioned arbitration award from Joseph C. Bowden's Central Registration Depository (CRD[®]) records.

FINRA should be served through its registered agent for service, Corporation Services Company, in the state in which the party is seeking expungement. For additional information, please see:

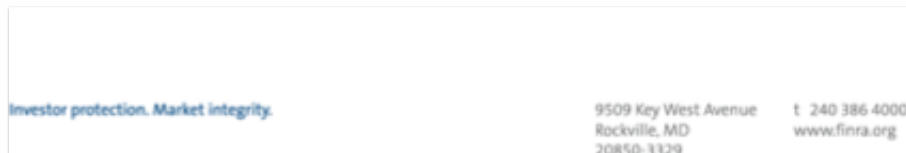
<https://www.finra.org/registration-exams-ca/classic-crd/faq/finra-rule-2080-frequently-asked-questions>

If you have any questions, please contact me at 240-386-4788.

Sincerely,



Karen Weinstein, Analyst
Credentialing, Registration, Education and Disclosure
Operations Policy Implementation



Mr. Colby,

I am writing to you as Chief Legal Officer because it appears that certain parts of the FINRA organization are engaging in unethical, unlawful, and retaliatory conduct. See the attached waiver denial and award. This is actually one of the most straight forward cases I have handled and every rule, procedure, and requirement has been met completely. There is no basis whatsoever for denial of the waiver request. I have tried contacting Stefanie Watkins, Karen Weinstein, and Kara Wright about this. Because I need an answer as to what basis FINRA could possibly have for denying this waiver other than retaliation for the comment letters, the last of which was submitted on May 9, that I have submitted to the SEC in response to the latest rule change request. I need an answer as to the basis for the denial of the waiver.

The arbitrator, who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

All requirements under Rule 13805 have been met.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

FINRA staff will review the information to determine whether the award complies with Arbitration Code Rule 4005, or 4005, and

FINRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact had a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC.

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc. Thank you!

Best,

James P. Galvin, Esq.
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Begin forwarded message:

From: James Galvin <james@galvinlegal.com>
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 1:33:25 PM EDT
To: "stefanie.watkins@finra.org" <stefanie.watkins@finra.org>, "Weinstein, Karen" <Karen.Weinstein@finra.org>, kara.wright@finra.org

I will also be sending emails one or more times daily until I receive a response to my inquiry as to what the basis of denial is. I intend to provide all of my inquiries, in addition to the comment letter that I just submitted a few days ago to the court when I seek to confirm the Award. I will seek damages. If FINRA has no basis for denying this Award, then it is clear that the conduct is retaliatory in nature. That kind of conduct is not regulatory activity. That kind of conduct is not shielded by qualified immunity. That kind of conduct is not authorized by statute, cannot be authorized by statute, and is actually prohibited by statutes.

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On May 15, 2023, at 1:28 PM, James P. Galvin <james@galvinlegal.com> wrote:

I would like to be very clear. I pointed out a large number of Constitutional violations FINRA's conduct is resulting in. If FINRA would like to test me out in court, then I truly do welcome the opportunity. But I can assure you that FINRA does not want that chance to be based on it taking retaliatory action and harming my client because it is upset that I pointed out is wrongful conduct. Everything has been met in this matter. There is no basis to vacate the award. It makes no sense to deny the waiver, and there is no basis to deny the waiver, except as a retaliatory measure.

James P. Galvin, Esq.
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On May 15, 2023, at 1:12 PM, James P. Galvin <james@galvinlegal.com> wrote:

Dear Ms. Watkins,

I am writing to inquire about this denied waiver request. There is no imaginable basis that it would be denied.

The arbitrator who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

FINRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact had a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC,

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—which it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter how the matter proceeded etc.

facts of this matter, how the matter proceeded, etc.

Best,

James P. Galvin, Esq.
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Begin forwarded message:

From: James Galvin <james@galvinlegal.com>
Subject: Re: FINRA Rule 2080 Waiver Request Response Notification
Date: May 15, 2023 at 1:00:04 PM EDT
To:
"Weinstein, Karen" <Karen.Weinstein@finra.org>

Ms. Weinstein,

The arbitrator who is an attorney, after a 3 hour and 45 minute hearing, during which the attorney customer participated the entire time, made TWO affirmative findings of fact that TWO of the criteria of Rule 2080 have been met.

The customer was clearly notified and participated in the hearing.

There are no timing issues.

All of the procedural requirements were followed.

There is no basis for a motion to vacate.

There is no basis for FINRA denying the Waiver and I demand to be informed of what the basis of denial is.

FINRA's Rule 2080 FAQ Number 7 states:

NRA staff will review the information to determine whether the award complies with Arbitration Code Rule 12805, or 13805, and whether the expungement relief was awarded based on one or more of the standards in Rule 2080. Provided that the award reflects compliance with the Arbitration Code, and contains an affirmative finding that the expungement meets one or more of the standards in Rule 2080, FINRA staff will generally grant the waiver. See Notice to Members 04-16.

Again, the arbitrator made an affirmative finding of fact that TWO criteria in Rule 2080 were met.

All of the requirements in Rule 13805 have been met.

There are no other concerns with the Award.

The customer had no losses, and in fact has a 12+ percent return on the account.

There is literally no basis that I can imagine for denying this Request other than as retaliation for my comment letter to the SEC,

I demand that FINRA either provide me with the basis for the denial or to review the denial and grant the waiver if no basis exists—which it is extremely difficult to imagine what kind of a stretch argument would have to be made as a basis. Especially given all of the facts of this matter, how the matter proceeded, etc.

Best,

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On May 15, 2023, at 12:16 PM, Weinstein, Karen <Karen.Weinstein@finra.org> wrote:

JOSEPH C [REDACTED], CRD# 5326755
FINRA Arbitration Case #: [REDACTED]
Joseph C. [REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

James Galvin:

Attached please find FINRA's Rule 2080 Waiver Request response letter for the above-named individual(s).

Karen Weinstein, Associate Principal Analyst
Operations Policy Implementation
Credentialing, Registration, Education and Disclosure (CRED)
240-386-4788

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<FINRA-[REDACTED]-Denial Letter.pdf>

<FINRA-[REDACTED]-Denial Letter.pdf>

[REDACTED]
Award...23.pdf



May 15, 2023

Galvin Legal PLLC
James P. Galvin, Esq.

VIA EMAIL: james@galvinlegal.com

JOSEPH C BOWDEN, CRD# 5326755
FINRA Arbitration Case #: 22-02238
Joseph C. Bowden vs. Merrill Lynch, Pierce, Fenner & Smith, Inc.

Dear Mr. Galvin:

FINRA has determined to deny your request to waive the obligation under FINRA Rule 2080 to name FINRA as a party in any judicial proceeding to confirm the award issued in the above-captioned proceeding. Therefore, pursuant to Rule 2080 you are required to name FINRA as a party in any court action seeking an order to expunge customer dispute information referenced in the above-captioned arbitration award from Joseph C. Bowden's Central Registration Depository (CRD[®]) records.

FINRA should be served through its registered agent for service, Corporation Services Company, in the state in which the party is seeking expungement. For additional information, please see:
<https://www.finra.org/registration-exams-ce/classic-crd/faq/finra-rule-2080-frequently-asked-questions>

If you have any questions, please contact me at 240-386-4788.

From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:18 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



Ms. Duddy,

I am aware. And I am also aware that FINRA is a private entity that enjoys qualified immunity through statutory delegation. I understand FINRA will not necessarily oppose the confirmation—what would be the basis. But there is no basis for denying the waiver. None at all. If it is your normal process to grant them in basic straight forward cases where there is no basis for denial, then why would you do it? If you cannot provide an actual basis, then that is retaliation. You may not be a state actor. But it is only when you are engaged in regulatory activity that you have immunity. If you are engaged in retaliation, then that is not regulatory activity. Please provide me with the basis for the denial.

Best,

James P. Galvin, Esq.
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Mobile: (404) 451-6742
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On May 15, 2023, at 3:13 PM, Duddy, Suzanne <Suzanne.Duddy@finra.org> wrote:

Mr. Galvan,

Your inquiry has been forwarded to my attention. I understand from your communications to CRED that you are threatening to sue FINRA for damages and liability in connection with the denial of waiver letter that you received in the above matter. The denial letter only requires that FINRA be named in any action seeking to confirm the underlying arbitration award, and that FINRA has not waived that requirement pursuant to FINRA Rule 2080. The denial of waiver letter does not necessarily mean that FINRA will oppose confirmation of the Award in that action or seek to vacate the award, only that FINRA should be named in the action. FINRA will assess your client's specific petition and its response to same when it is served with that case. FINRA Rule 2080 explicitly states that "FINRA may waive the obligation to name FINRA as a party" and denying or granting waiver requests is within FINRA's discretion. The Rule does not guarantee that FINRA will waive the requirement to be named in actions to confirm arbitration awards, nor does it require FINRA to provide an explanation for its decision.

As I am sure you are aware, FINRA is not a state actor and thus is not subject to constitutional claims and is protected from damages by its regulatory and forum immunity. Thus, I do not believe it is necessary to continue to threaten FINRA in connection with this matter. When you file the confirmation action, please serve FINRA's
statutory agent CCO

statutory agent CSC.

Thank you,

Suzanne Duddy

Suzanne E. Duddy
Assistant General Counsel
FINRA
Office of General Counsel
1735 K St. NW
Washington DC 20006
(202) 728-8378
Suzanne.Duddy@finra.org

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From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:39 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



Ms. Duddy,

As it states on FINRA's website:

... under federal and state laws, there are limited grounds on which a court may hear a party's appeal on an award. Specifically, the law permits a district court to vacate or overturn an arbitration award if it finds that:

the award was procured by corruption, fraud, or undue means;
there was evident partiality or corruption in the arbitrators;
the arbitrators were guilty of misconduct in refusing to postpone the hearing, even in light of sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced;
the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made;
the arbitrators disregarded a clearly defined law or legal principle applicable to the case before them (Manifest Disregard of the Law);
or
there is no factual or reasonable basis for the award (Complete Irrationality).

Not a single one of those criteria applies. Two Rule 2080 affirmative findings were made. All Rule 13805 and procedural requirements have been met. Not a single reason exists for the denial. If it is FINRA's standard procedure to grant waivers in those situation, regardless of whether the rules says it "may" grant the waiver, then it is evident that the waiver was denied for reasons other than the entire purpose of confirmations. There is no basis for FINRA to vacate this award. There is no basis to deny the waiver except to create additional work and problems in retaliation because it is upset that I pointed out the problems with its current expungement process in great detail in a comment letter to a rule change request. You can talk about immunity all day. But retaliatory conduct is not regulatory activity, which is what your immunity covers. And unless you can provide an actual basis for denying the waiver request, then whether this is retaliation or not is a question of fact for a jury to consider as retaliation is not regulatory activity.

Please review the denial. See for yourself if there is any actual basis. If there is, then just tell me and I will go through the additional hoops to confirm the award. But if there is no basis, then the denial needs to be overridden and the waiver granted. Thank you!
Best,

James P. Galvin, Esq.
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On May 15, 2023, at 3:18 PM, James P. Galvin <james@galvinlegal.com> wrote:

Ms. Duddy,

I am aware. And I am also aware that FINRA is a private entity that enjoys qualified immunity through statutory delegation. I understand FINRA will not necessarily oppose the confirmation—what would be the basis. But there is no basis for denying the waiver. None at all. If it is your normal process to grant them in basic straight forward cases where there is no basis for denial, then why would you do it? If you cannot provide an actual basis, then that is retaliation. You may not be a state actor. But it is only when you are engaged in regulatory activity that you have immunity. If you are engaged in retaliation, then that is not regulatory activity. Please provide me with the basis for the denial

provide me with the basis for the denial.

Best,

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On May 15, 2023, at 3:13 PM, Duddy, Suzanne <Suzanne.Duddy@finra.org> wrote:

Mr. Galvan,

Your inquiry has been forwarded to my attention. I understand from your communications to CRED that you are threatening to sue FINRA for damages and liability in connection with the denial of waiver letter that you received in the above matter. The denial letter only requires that FINRA be named in any action seeking to confirm the underlying arbitration award, and that FINRA has not waived that requirement pursuant to FINRA Rule 2080. The denial of waiver letter does not necessarily mean that FINRA will oppose confirmation of the Award in that action or seek to vacate the award, only that FINRA should be named in the action. FINRA will assess your client's specific petition and its response to same when it is served with that case. FINRA Rule 2080 explicitly states that "FINRA may waive the obligation to name FINRA as a party" and denying or granting waiver requests is within FINRA's discretion. The Rule does not guarantee that FINRA will waive the requirement to be named in actions to confirm arbitration awards, nor does it require FINRA to provide an explanation for its decision.

As I am sure you are aware, FINRA is not a state actor and thus is not subject to constitutional claims and is protected from damages by its regulatory and forum immunity. Thus, I do not believe it is necessary to continue to threaten FINRA in connection with this matter. When you file the confirmation action, please serve FINRA's statutory agent CSC.

Thank you,

Suzanne Duddy

Suzanne E. Duddy
Assistant General Counsel
FINRA

Office of General Counsel
1735 K St. NW
Washington DC 20006
(202) 728-8378
Suzanne.Duddy@finra.org

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From: James P. Galvin james@galvinlegal.com
Subject: Re: [REDACTED]
Date: May 15, 2023 at 3:57 PM
To: Duddy, Suzanne Suzanne.Duddy@finra.org



I understand all of that. But if there is no basis for the denial, then that is irrelevant. It creates additional work and costs. If there is absolutely no basis to deny the waiver, regardless of what you are permitted to do, and your standard procedure is to grant the waiver when absolutely no basis exists for denial, then I find it very difficult to see how you defend the denial. And whether you are required to provide the reason for the denial under the rules, you have provided it to me before—Karen has. If you have a legitimate reason for denying the waiver, then you should have no problem telling me the basis. Refusing to tell me the basis just further supports my argument that this is entirely retaliatory.

James P. Galvin, Esq.
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On May 15, 2023, at 3:54 PM, Duddy, Suzanne <Suzanne.Duddy@finra.org> wrote:

Mr. Galvin,

As the underlying arbitration Award itself states: “Mr. [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.” The Award also states that “Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.” Thus, confirmation of the arbitration award is required whether FINRA granted waiver or not. The only “additional” hoop that FINRA’s denial of waiver requires is that you name and serve FINRA in your confirmation action. That is the only effect of the waiver denial. I hope this resolves your concerns,
Suzanne Duddy

From: James P. Galvin <james@galvinlegal.com>
Sent: Monday, May 15, 2023 3:40 PM
To: Duddy, Suzanne <Suzanne.Duddy@finra.org>
Subject: Re: [REDACTED]

WARNING: External Sender! Exercise caution with links, attachments and requests for login information.

Ms. Duddy,

As it states on FINRA's website:

... under federal and state laws, there are limited grounds on which a court may hear a party's appeal on an award. Specifically, the law permits a district court to vacate or overturn an arbitration award if it finds that:

the award was procured by corruption, fraud, or undue means;
there was evident partiality or corruption in the arbitrators;
the arbitrators were guilty of misconduct in refusing to postpone the hearing, even in light of sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced;
the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made;
the arbitrators disregarded a clearly defined law or legal principle applicable to the case before them (Manifest Disregard of the Law); or
there is no factual or reasonable basis for the award (Complete Irrationality).

Not a single one of those criteria applies. Two Rule 2080 affirmative findings were made. All Rule 13805 and procedural requirements have been met. Not a single reason exists for the denial. If it is FINRA's standard procedure to grant waivers in those situation, regardless of whether the rules says it "may" grant the waiver, then it is evident that the waiver was denied for reasons other than the entire purpose of confirmations. There is no basis for FINRA to vacate this award. There is no basis to deny the waiver except to create additional work and problems in retaliation because it is upset that I pointed out the problems with its current expungement process in great detail in a comment letter to a rule change request. You can talk about immunity all day. But retaliatory conduct is not regulatory activity, which is what your immunity covers. And unless you can provide an actual basis for denying the waiver request, then whether this is retaliation or not is a question of fact for a jury to consider as retaliation is not regulatory activity.

Please review the denial. See for yourself if there is any actual basis. If there is, then just tell me and I will go through the additional hoops to confirm the award. But if there is no basis, then the denial needs to be overridden and the waiver granted. Thank you!

Best,

James P. Galvin, Esq.
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On May 15, 2023, at 3:18 PM, James P. Galvin <james@galvinlegal.com> wrote:

Ms. Duddy,

I am aware. And I am also aware that FINRA is a private entity that enjoys qualified immunity through statutory delegation. I understand FINRA will not necessarily oppose the confirmation—what would be the basis. But there is no basis for denying the waiver. None at all. If it is your normal process to grant them in basic straight forward cases where there is no basis for denial, then why would you do it? If you cannot provide an actual basis, then that is retaliation. You may not be a state actor. But it is only when you are engaged in regulatory activity that you have immunity. If you are engaged in retaliation, then that is not regulatory activity. Please provide me with the basis for the denial.

Best,

James P. Galvin, Esq.
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