

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Adam Strege

File No. 3-21253

For Review of Action Taken by
Financial Industry Regulatory Authority

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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March 13, 2023

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I. Introduction

Applicant Adam Strege attempted to file an arbitration claim with FINRA’s arbitration forum, FINRA’s Dispute Resolution Services (“DRS”), based on an alleged suitability violation and an assertion that he was denied reasonable accommodation for his disability. Strege’s statement of claim, however, lacked clarity with respect to the relevant facts and included, in the 116-page claim, more than 100 pages of narration of events unrelated to a brokerage account, including multiple references to mass murders. While FINRA rules allow customers to use DRS to resolve disputes with a member, the Director of DRS (the “Director”) is authorized under FINRA rules to deny a claimant access to the forum if the Director has determined that accepting the matter would pose a health or safety risk. Here, the Director reasonably exercised his authority and denied Strege the use of FINRA’s arbitration forum. Strege’s 116-page claim

included content that led the Director to believe that Strege posed a safety threat.¹ The Director's decision was entirely correct and is consistent with federal law and applicable FINRA rules.

II. Factual and Procedural Background

A. Background

Strege appears to have at least one brokerage account with TD Ameritrade, Inc. ("TDA").² (R. at 121-127.)³ According to documentation included in his claim, the Social Security Administration found that Strege became disabled in December 2008, and he is entitled to monthly disability benefits. (R. at 132.)

B. Strege Files a Statement of Claim with FINRA Dispute Resolution Services

On November 29, 2022, Strege filed a statement of claim with DRS seeking damages for a suitability claim against TDA and Bank of America. (R. at 1.) Strege also alleged disability discrimination, including failure to provide reasonable accommodation.⁴ (R. at 2.) According to Strege's statement of claim, representatives of TDA recommended he open a margin account.

¹ On March 9, 2023, the Director executed a declaration in which he further explains the basis for his determination. The declaration is attached as Exhibit 1. A separate motion for a protective order to limit disclosure of this declaration was filed concurrently with this brief.

² Strege's complaints appear to be primarily against TDA. He also names other parties as respondents in his original and amended claims, including Waterhouse Securities, Inc., TD Waterhouse Investor Services, Inc., Bank of America Financial Services Company ("Bank of America"), and Charles Schwab & Co., Inc.

³ "R. ___" refers to the page numbers in the certified record filed by FINRA on December 21, 2022.

⁴ Strege also alleges, among other things, fraud, negligence, breach of the implied covenant of good faith and fair dealings, and violations of the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. (R. at 2.)

(R. at 1.) As a result of his disability, however, Strege was unable to control the number of times he pressed “Buy,” which led to \$38,300 in losses. (R. at 2.) Strege requested that TDA provide him with a computer assistive device that would enable him to design a risk control system that included max stop losses per day and per position. (R. at 2.) TDA denied his request. (R. at 2.) Strege’s purported transcription of his electronic chats with TDA representatives, which he included in his statement of claim, reflect that the TDA representative with whom Strege corresponded stated that TDA did not have such a function. (R. at 7-8.)

In addition to Strege’s description of the issues he encountered at TDA, Strege’s 116-page claim also contained more than 100 pages of content unrelated to Strege’s complaints. These pages comprise paragraphs of words and phrases that seemingly bear no relation to each other and that are often of a violent nature, such as, “[t]he St. Valentine’s Day Massacre in Chicago [h]og butcher for the world, Cornelius Vanderbilt Covid 19 Vaccine Laboratory VA Hospital by Headquarters Hardee.” (R. at 18.) The claim also accuses TDA of violent acts, asserting that “TD Ameritrade murders its customers to rob their brokerage accounts.” (R. at 1.) Similarly, according to the transcription of his electronic chats, Strege wrote to a TDA representative: “You are not afraid that People will File a lwasuit against TD Amertade will murder anyone that does.” (R. at 7.) In addition, Strege claims that he was “false[ly] arrest[ed]” by the FBI for making threats against the Social Security Administration. (R. at 108.)

Strege’s claim also includes multiple references to murder, weapons, and mass deaths. (R. at 1-116.) For example, in the opening paragraph of the claim, Strege states: “My Only means of relief God loves to collapse the atmosphere and exterminate all earth people with the Plague and Corona Virus” (R. at 1.) The claim contains approximately 32 instances of the word “murder,” or variations thereof. (R. at 1, 3, 7, 14, 21, 25, 41, 48, 51, 56, 58, 65, 68, 75, 76,

79, 80, 89, 96, 97, 107, 114, 116.) Throughout his claim, Strege repeatedly references events that involved multiple casualties, ranging from the September 11, 2001 terrorist attacks on the World Trade Center to several high-profile mass shootings. (R. at 21, 26, 27, 28, 38, 58, 67, 90, 94, 98, 116.) For example, he references the 2015 shooting in San Bernadino, the 2016 Pulse nightclub shooting in Orlando, and the 2017 shooting at a music festival in Las Vegas. (R. at 26, 67, 98.) Regarding the 1999 shooting at Columbine High School, he states: “Columbine CO School Shooters worked at Black Jack Pizza and From Sheridan WY and Linda Kock and me visit Estes Park Beside McDonalds the Shinning Hotel Steven King Hotel Mirror” (R. at 58.)

On the same day Strege filed the statement of claim, DRS notified Strege that, for his claim to be served, he would need to provide the names and addresses of the respondents, the Central Registration Depository (“CRD”) number for each respondent, the allegations against each respondent, the date the dispute arose, clarification of the damages sought, and Strege’s age.⁵ (R. at 119-20.) The notice gave Strege 30 days to correct the deficiencies in the claim. (R. at 120.)

On November 30, 2022, Strege filed an amended statement of claim. (R. at 121-239.) The amended claim clarified some of the names of the respondents and provided two CRD numbers but was otherwise substantially similar to the original claim, including similar allegations of violence against the respondents named in the claim. (R. at 121-22.) The amended claim, for example, alleges that “FINRA has Jurisdiction with Bank of America the

⁵ DRS required confirmation of Strege’s age because Strege had requested an expedited proceeding, which DRS provides in matters involving individuals who are 65 years or older or who have a serious health condition.

Owner of 3 Brokerage Firms TD Ameritrade, Charles Schwab Corporation, Merrill Lynch Conspiracy to commit a crime Murdering and Robing Traders Money.” (R. at 121.) The amended claim also states that “Bank America, CHARLES SCHWAB & CO and TD Ameritrade murders its customers to rob their brokerage accounts that TD Fraudulently robs Trader’s money on all trades with fraudulent incorrect buy and sell prices.” (R. at 122.)

On December 1, 2022, DRS sent Strege a second notice of deficiencies requesting clarification with respect to damages sought and the respondents listed in the caption, as well as confirmation of Strege’s age. (R. at 241.) The notice gave Strege until December 29, 2022, to correct the deficiencies. (R. at 241.) The same day, DRS sent Strege another notice that informed Strege that the Director had denied him the use of the forum pursuant to FINRA Rule 12203(a).⁶ (R. at 243.) The notification stated that it was from a senior case specialist, however, the signature block included the Director’s name and contact information. (R. at 243.)

On December 4, 2022, Strege filed a document entitled “FINRA Arbitration Notice of Appeal,” in which he requested information on how to appeal the Director’s denial of forum. (R. at 245-249.) On December 5, 2022, DRS advised Strege that there was no appeal process for the denial of forum and that the denial of forum was without prejudice to refile the claim in a court of competent jurisdiction. (R. at 251.)

⁶ Exhibit 1 further details the Director’s process surrounding his decision to deny Strege access to the forum. As noted above, FINRA has moved for a protective order to limit disclosure of the Director’s declaration. While the declaration provides additional support underlying the Director’s decision, FINRA’s arguments in its brief are fully supported notwithstanding the Director’s declaration.

Strege then filed a request with the Commission for information on the steps to appeal the Director's decision. (R. at 253.) Strege asserts that he contacted FINRA multiple times seeking this information, but that he was unable to obtain an answer from FINRA staff. (R. at 253.)

C. Strege Files an Application for Review with the Commission

On December 6, 2022, Strege filed an application for review with the Commission asking the Commission to review the Director's denial of the arbitration forum. (R. at 255-56.) On January 11, 2023, the Commission ordered the parties to submit briefing on the merits.⁷ On appeal, Strege argues that the denial of forum was an abuse of discretion because the denial did not come from, and was not signed by, the Director. (Strege Br. at 1, 4-5.) Strege's brief is otherwise similar to his initial and amended statements of claim in its inclusion of content unrelated to the issues on appeal and references to violence, murder, and events involving mass death. Such references include, for example, "God Loves the Computer Julie 4 to Collapse the planet's Atmosphere to exterminate all the People" and "I Build Courthouse Elevators and Tunnels kidnaping people with 3DI rebuild the 911 Pentagon." (Strege Br. at 4, 88.) He also again claims that respondents engaged in a "Conspiracy to commit a crime Murdering and Robing Traders Money." (Strege Br. at 8.)

III. Argument

The Director's decision denying Strege use of FINRA's arbitration forum was authorized by FINRA rules and based on the principle that the Director should have discretion to take the necessary steps to protect the health and safety of the people who use and administer the forum.

⁷ Strege filed his opening brief on January 12, 2023 ("Strege Br. at __"). Strege's brief does not contain page numbers, but FINRA's brief presumes numbering for purposes of citation.

The Director's decision was also consistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act of 1934 (the "Exchange Act") and the principles of investor protection and the public interest.

Here, Strege's claims accused the respondents of violent acts and contained repeated references to murder, weapons, and mass killings. The Director determined that Strege posed a threat to the safety of the forum's arbitrators, staff, and parties or their representatives and properly denied Strege the use of FINRA's arbitration forum. The Director's decision was an eminently reasonable use of his discretion under FINRA rules and consistent with the Exchange Act and the principles of investor protection and the public interest. Therefore, the Commission should dismiss Strege's application for review.

A. FINRA's Action Meets the Standards of Section 19(f) of the Exchange Act

Under Exchange Act Section 19(f), the Commission must dismiss Strege's application for review if it finds that: (1) the specific grounds on which FINRA based its action exist in fact; (2) FINRA's denial of the arbitration forum was in accordance with its rules; and (3) those rules were applied in a manner consistent with the purposes of the Exchange Act. 15 U.S.C. § 78s(f). FINRA's action here meets these standards: the Director's denial of FINRA's arbitration forum was based on the fact that Strege posed a threat to the safety of the people who use and administer the forum, the Director's action was in accordance with FINRA rules, and those rules were applied in a manner consistent with the Exchange Act and investor protection.

B. The Director's Denial of the Arbitration Forum Is Consistent with FINRA Rules

The Director may deny the use of FINRA's arbitration forum if accepting a claim would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives.

FINRA Rules 12203(a) and 13203(a) grant the Director the discretion to exclude inappropriate or unsafe arbitration claims from the FINRA arbitration forum. The rules are identical and provide:

(a) The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives.

FINRA Rules 12203(a), 13203(a).⁸

FINRA Rules 12203(a) and 13203(a) were promulgated in 2007 and replaced NASD Rule 10301(b). The 2007 rulemaking expanded the Director's authority through additional language providing for the Director's exclusion of matters that pose a health or safety risk. The rulemaking further broadened the Director's authority by eliminating a requirement that the Director obtain approval from the National Arbitration and Mediation Committee or its Executive Committee prior to a denial of forum that made it "difficult for the Director . . . to respond appropriately in emergency situations." *See Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Customer Disputes*, Exchange Act Release No. 34-51856, 2005 SEC LEXIS 1432, at *11 (June 15, 2005) (hereinafter "*Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4*"). In the notice of the proposed rule change, FINRA specifically referenced situations in which the "Director believes that it is in the best interest of the forum to deny use of the forum for reasons other than subject matter," such as when there is "reason to believe that a party would present a

⁸ Rule 12203 applies to arbitration of disputes between a customer and a member or an associated person of a member. Rule 13203 applies to industry disputes.

security risk to the forum or to other parties.” *Id.* at *10. The change, therefore, was designed to “give the Director limited, but crucial, flexibility to protect the integrity and the security of the [FINRA] forum.” *Id.* at *11.

In the Commission’s order approving FINRA Rules 12203 and 13203, the Commission underscored the fact that the rules empowered the Director to deny access to the arbitration forum in response to matters giving rise to health and safety concerns. Specifically, the Commission agreed with NASD that, “in emergency situations, it is reasonable for the Director to have the authority and flexibility to act quickly to protect the health and safety of users and administrators of the forum.” *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules for Customer Disputes and Notice of Filing and Order Granting Accelerated Approval of Amendments 5, 6, and 7 Thereto*, 72 Fed. Reg. 4574, 4602 (Jan. 31, 2007) (hereinafter “*Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*”). At the time of these statements, the Commission was approving the *expansion* of the Director’s discretionary authority under FINRA Rules 12203 and 13203.

In this case, the Director reasonably exercised his discretion under FINRA Rule 12203 to deny access to the forum based on the potential safety threat posed by Strege. The Director had ample “reason to believe” that Strege could “present a security risk to the forum or to other parties.” *Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4*, at *10. While Strege’s claims did not directly threaten physical violence against a party, arbitrator, or FINRA employee, they contained sufficient red flags to qualify as a security risk to arbitrators, the parties, and FINRA employees. The claims accused the brokerage firms against which Strege had filed the claims of murder and robbery. (R. at 1, 121-22.) The claims also repeatedly

invoked murder, mass shootings, and weapons that were unrelated to Strege's complaints regarding the denial of a computer assistive device to aid him in his trading. (R. at 1-116, 121-239.) Based on the consistent theme of violence in Strege's claims, including allegations of violence by the parties to the arbitration, the Director reasonably exercised his discretion in determining that permitting Strege to proceed to arbitration could pose a safety risk to arbitrators, parties and their representatives, and FINRA employees. Strege's brief on appeal, and the references to violence therein, further demonstrate that proceeding with arbitration in this matter would lead a reasonable person to have safety concerns. Accordingly, the Director's decision to deny the arbitration forum in this case is consistent with FINRA rules.

C. FINRA's Notice Adequately Informed Strege of the Director's Decision

FINRA informed Strege about the Director's decision to deny access to FINRA's arbitration forum in a notice from DRS setting forth the specific grounds on which the prohibition was based. (R. at 243.) *See* 15 U.S.C. § 78o-3(h)(2).⁹ Strege nevertheless claims that the notice communicating the Director's decision was inadequate and did not comply with FINRA rules because a FINRA case specialist conveyed the notice. (Strege Br. at 1, 4-5.) This argument is without merit. The notice explicitly references FINRA Rule 12203(a) as the basis for the denial of forum. (R. at 243.)

FINRA rules do not require that the Director himself convey or otherwise communicate his decision to deny the forum. (Strege Br. at 1, 4-5.) By referencing FINRA Rule 12203(a), it is axiomatic that the Director exercised his authority under the rules, regardless of whether he

⁹ Section 15A(h)(2) provides that national securities associations are required to keep a record and to provide notice, an opportunity to be heard, and a "statement setting forth the specific grounds" on which its denial is based. 15 U.S.C. § 78o-3(h)(2). FINRA met these requirements in this case.

personally signed the notice communicating his decision or the notice explicitly referenced that “the Director” made the decision. But here, not only did the notice reference FINRA Rule 12203(a), the notice also explicitly stated that the “*Director* denies the use of the forum” “pursuant to FINRA Rule 12203(a)” and was from the Director, with his name in the signature block. (R. at 243 (emphasis added).)

Moreover, although FINRA sent Strege a second notice of deficiencies on the same day it sent the denial of forum notice, Strege understood that the Director’s decision superseded the notice of deficiencies because he immediately contacted FINRA about challenging that decision. In sum, FINRA effectively communicated the Director’s decision.¹⁰

Strege also argues that it was “clear error” that the denial of forum notice was unsigned. (Strege Br. at 4-5.) In support of his argument, Strege cites requirements that have no

¹⁰ As noted above, upon inquiry from Strege, FINRA advised Strege that there was no appeal process for the Director’s denial of forum and that the denial of forum was without prejudice to refile the claim in a court of competent jurisdiction. (R. at 251.) Strege also claimed that, despite multiple attempts to contact FINRA about the appeal process, his messages went unreturned or his calls were disconnected. (R. at 253.) Although FINRA did not inform Strege how to file an appeal to the Commission regarding the Director’s denial of forum, it was harmless error because Strege was able to appeal, as evidenced by this action before the Commission. *See, e.g., U.S. Assocs., Inc.*, 51 S.E.C. 805, 812 & n.24 (1993) (noting that finding of harmless error may overcome procedural objections); *see also Daniel Richard Howard*, 55 S.E.C. 1096, 1104 (2002) (rejecting applicant’s arguments of procedural irregularities and stating that “even assuming that some minor procedural irregularity occurred, it would fall into the category of harmless error”); *Curtis I. Wilson*, 49 S.E.C. 1020, 1024 (1989) (rejecting applicant’s argument that he did not receive a proper hearing before a duly constituted hearing panel because the panel consisted of two members and not three as specified by FINRA’s rules in place at the time and concluding that applicant did not suffer any prejudice), *aff’d*, 902 F.2d 1580 (9th Cir. 1990).

application here.¹¹ FINRA rules do not require a signature for a denial of forum notice under FINRA Rule 12203(a).

D. The Director's Denial of the Arbitration Forum Is Consistent with the Exchange Act and the Public Interest

The Director's denial of the arbitration forum was not only pursuant to FINRA rules, it was also consistent with the Exchange Act. The Director's exercise of discretion under FINRA Rules 12203 and 13303 is "consistent with the requirements of [Section 15A(b)(6) of the Exchange] Act and the rules and regulations thereunder." *Order Approving Proposed Rule Change and Amendments 1, 2, 3, and 4 to Amend NASD Arbitration Rules*, 72 Fed. Reg. at 4601. FINRA Rules 12203 and 13203 were "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest," as required by the Exchange Act. *Id.* The Director's reasonable exercise of discretion to deny the use of the forum "to protect the health and safety of users and administrators of the forum" "in emergency situations" is consistent with the principles of investor protection and the public interest because investors, broker-dealers and their associated persons, and regulators all share a common interest in having a safe forum in which to resolve their disputes. *Id.* at 4602. Here, Strege's claim contained accusations of violence by the respondents and repeated references to murder, weapons, and mass killings. (R. at 1-116, 121-239.) Therefore, the Director's action denying Strege access to FINRA's arbitration forum was consistent with the Exchange Act and the principles of investor protection and the public interest.

¹¹ For example, Strege cites SEC Rule 302(b) of Regulation S-T, which details the requirements for signatures within electronic submissions to the SEC's EDGAR computer system. *See* 17 C.F.R. § 232.302. He also cites Federal Rule of Appellate Procedure 32, which requires parties to an appeal filed in a United States Court of Appeals, or their representatives, to sign every brief, motion, or other paper filed with the court. *See* Fed. R. App. P. 32.

IV. Conclusion

The Director's decision to deny Strege access to FINRA's arbitration forum is based on facts that exist, is in accordance with FINRA's rules, and is consistent with the purposes of the Exchange Act. Accordingly, the Commission should dismiss Strege's application for review.

Respectfully submitted,

/s/ Elizabeth Sisul

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March 13, 2023

CERTIFICATE OF COMPLIANCE

I, Elizabeth Sisul, certify that this Brief in Opposition to the Application for Review (File No. 3-21253) complies with the length limitations set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 5,599 words.

I further certify that I have complied with the Commission's Rules of Practice by filing a brief that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

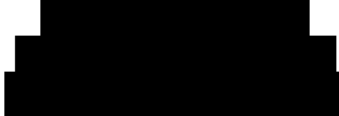
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CERTIFICATE OF SERVICE

I, Elizabeth Sisul, certify that on this 13th day of March 2023, I caused a copy of FINRA's Brief in Opposition to the Application for Review, in the matter of Application for Review of Adam Strege, Administrative Proceeding File No. 3-21253, to be filed through the SEC's eFAP system and served by electronic mail on:

Adam Strege



/s/ Elizabeth Sisul

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FINRA'S INDEX TO EXHIBITS

EXHIBIT

Description

1

Declaration of Richard Berry, dated March 9, 2023