

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92923 / September 9, 2021

Admin. Proc. File Nos. 3-18616, 3-18617, 3-18877, 3-18879, 3-18883, 3-18910, 3-18919,
3-18934, 3-18988, 3-19013, 3-19016, 3-19017, 3-19219, 3-19228, 3-19405, 3-19573, 3-19574,
3-19588, 3-19611, 3-20160, 3-20205

In the Matter of the Application of

CONSOLIDATED ARBITRATION APPLICATIONS

For Review of Action Taken by

FINRA

ORDER SEVERING PROCEEDINGS

Kent Vincent Pearce and Alton Theodore Davis, Jr., associated persons of FINRA member firms, each filed a claim in FINRA's arbitration forum seeking to expunge from their Central Registration Depository records information about underlying customer arbitration awards entered against them. After FINRA denied their expungement requests as ineligible for arbitration, Pearce and Davis each filed an application for review with the Commission.

On November 25, 2019, we granted FINRA's motion to consolidate Pearce's and Davis's cases with other cases presenting similar fact patterns that had already been consolidated for the purpose of deciding whether the Commission had jurisdiction to consider them under Section 19(d) of the Securities Exchange Act of 1934.¹ On August 6, 2020, the Commission issued an order finding that it has jurisdiction to consider the consolidated applications because FINRA prohibited the applicants' access to its arbitration forum for seeking expungement of customer dispute information, which we found was a fundamentally important service offered by FINRA.² We also determined that it was appropriate for the cases to remain consolidated for purposes of considering the merits because they raise common questions of law and fact.³ Upon further

¹ *Consolidated Arbitration Applications*, Exchange Act Release No. 87615, 2019 WL 6287506 (Nov. 25, 2019).

² *See Consolidated Arbitration Applications*, Exchange Act Release No. 89495, 2020 WL 4569083 (Aug. 6, 2020).

³ *See id.* at *3-4.

review, however, we find that Davis's and Pearce's cases differ materially from the other applications for review that we consolidated. We therefore sever these two cases.⁴

The underlying customer arbitration awards issued against Pearce and Davis seem to indicate that, unlike the other applicants in the *Consolidated Arbitration Applications*, they requested and were denied expungement of the information regarding the underlying arbitrations from their records during the underlying customer arbitration proceedings. Because it appears as a result that Davis and Pearce may not have been denied access to the arbitration forum for their requests to expunge the prior adverse arbitration awards,⁵ we sever *Davis* and *Pearce* from the *Consolidated Arbitration Applications* under our Rule of Practice 201(b). Orders requesting additional briefing as to the jurisdiction issue in *Davis* and *Pearce* will issue separately.

Accordingly, it is ORDERED that the applications for review in *Kent Vincent Pearce*, Admin. Proc. File No. 3-19228, and *Alton Theodore Davis, Jr.*, Admin. Proc. File No. 3-19588, are severed from this consolidated proceeding.

By the Commission.

Vanessa A. Countryman
Secretary

⁴ See Rule of Practice 201(b), 17 C.F.R. § 201.201(b) (providing that the Commission may sever any proceeding with respect to one or more parties upon a showing of good cause).

⁵ Cf. *Dustin Tylor Aiguier*, Exchange Act Release No. 88953, 2020 WL 2743938, at *2-3 (May 26, 2020) (holding that FINRA's action denying applicant's request to reopen an earlier arbitration hearing did not limit his access to FINRA's arbitration service, and thus there was no jurisdiction under Section 19(d), because applicant had accessed FINRA's arbitration forum); *John Boone Kincaid III*, Exchange Act Release No. 87384, 2019 WL 5445514, at *3-5 (Oct. 22, 2019) (concluding that FINRA action giving effect to arbitrator's award was not a limitation of access to arbitration, and thus there was no jurisdiction under Section 19(d), where the applicant received a ruling from the arbitrator denying the requested relief and sought to challenge the ruling as an erroneous application of FINRA's rules). This severance order expresses no view as to whether FINRA in fact denied Pearce and Davis access to the arbitration forum. Pearce, Davis, and FINRA will have the opportunity to address that question in additional briefs.