

**Citigroup Global Mkts., Inc. v Financial Indus.
Regulatory Auth. (FINRA), Inc.**

2019 NY Slip Op 30833(U)

March 25, 2019

Supreme Court, New York County

Docket Number: 650970/2019

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

At IAS Part 37 of the Supreme Court of the State of New York, held in and for the County of New York, at the Supreme Court, 60 Centre Street, New York, New York, on the 27 day of March, 2019.

PRESENT:

HON: A. Engoron
JUSTICE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CITIGROUP GLOBAL MARKETS, INC.,
Petitioner,

v.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY (FINRA), INC.,
Nominal Respondent.
----- X

Index No. 650970/2019

DECISION AND ORDER

Petitioner Citigroup Global Markets, Inc. ("Petitioner" or "CGMI"), by its attorneys, Bressler, Amery & Ross, P.C., has duly applied for an Order pursuant to CPLR § 7510 to confirm the arbitrator's Award in an arbitration before the Financial Industry Regulatory Authority ("FINRA"), captioned *Aldus N. Chapin and Chapin Family Trust v. Citigroup Global Markets, Inc. and TD Ameritrade, Inc.*, FINRA Dispute Resolution Arbitration No. 17-03437 (the "FINRA Arbitration").

Upon reading and filing the following papers submitted to the Court, including the Petition to Confirm an Arbitration Award Pursuant to CPLR §7510, the Affirmation of David I. Hantman, Esq., with exhibits A and B annexed thereto, which include a copy of the FINRA arbitration panel's Award recommending expungement of the FINRA Arbitration from Judith Leahy's and Andrea Frezza's Central Registration Depository ("CRD") and FINRA's letter to Petitioner dated February 14, 2019, waiving the obligation under FINRA Rule 2080 to name FINRA as a party in

this proceeding and said application having regularly come on to be heard, and after due deliberation having been had thereon,

NOW, upon the application of Bressler, Amery & Ross, P.C., attorneys for Petitioner, it is hereby

ORDERED that the Petition is hereby granted solely to that portion of the arbitrators' Award in the FINRA Arbitration recommending expungement, and is confirmed consistent with the below:

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- I. The Panel recommends the expungement of all references to occurrence number 1966508 from registration records maintained by the Central Registration Depository ("CRD"), for unnamed party Andrea Frezza (CRD# 1067271), with the understanding that, pursuant to Notice to Members 04-16, unnamed party Andrea Frezza must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous;
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
- the claim allegation or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

The claims, allegations or information is factually impossible and/or clearly erroneous because the alleged loss in value of the bonds was only realized after holding the bonds for more than eight (8) years; the Claimants personally selected the bonds that were purchased; the account was managed on a 100% nondiscretionary basis, and it was the Claimants who

personally selected and ordered the Financial Advisors to purchase the bonds for the account.

Andrea Frezza was not involved in any alleged investment-related sales practice violation, nor any forgery, theft, misappropriation or conversion of funds since any alleged unsuitability was not founded upon any FINRA Rule and the Claimant selected specific bonds to purchase and often at specific prices, and not by any recommendation of the Financial Advisors.

The claims, allegations or information are false because the alleged loss value of the bonds was only realized after holding the bonds for more than eight (8) years; Claimants' personally selected bonds that were alleged to have lost value; the account was a buy and hold account managed solely by the Claimants; the account was managed on a 100% non-discretionary basis and it was the Claimant who selected and ordered the Financial Advisor to purchase the bonds for the account and, in addition, the Claimants received all information from, inter alia, Market Reports, "Red-Herrings" and personal research, often selecting the bond before the Financial Advisors were aware of the pending underwriting.

The Financial Advisors were never asked to make any recommendation of securities and only acted as a conduit to the Citigroup Global Markets, Inc.'s Bond Desk and bond inventory and nothing more than order takers, never even being asked to concur in the selection of the security.

Claimants voluntarily withdrew the claims, with prejudice, during the early stages of the discovery process and that materially affects the Claimants' credibility. A comparison of factual allegations set out in the initial letter to the Respondent were refuted by documentary evidence and testimony.

Claimant Aldus Chapin was highly sophisticated and had extensive experience with running in-house fixed income departments at major international banking institutions.

- II. The Panel recommends the expungement of all references to occurrence number 1974975 from registration records maintained by the Central Registration Depository ("CRD"), for unnamed party Judith Leahy (CRD# 1379577), with the understanding that, pursuant to Notice to Members 04-16, unnamed party Judith Leahy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous;
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
- the claim allegation or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

The claims, allegations or information is factually impossible and/or clearly erroneous because the alleged lost in value of the bonds was only realized after holding the bonds for more than eight (8) years; the Claimants personally selected the bonds that were purchased; the account was managed on a 100% nondiscretionary basis, and it was the Claimants who personally selected and ordered the Financial Advisors to purchase the bonds for the account.

Judith Leahy was not involved in any alleged investment-related sales practice violation, nor any forgery, theft, misappropriation or conversion of funds since any alleged unsuitability was not founded upon any FINRA Rule and the Claimant selected specific bonds to purchase and often at specific prices, and not by any recommendation of the Financial Advisors.

The claims, allegations or information are false because the alleged loss in value of the bonds was only realized after holding the bonds for more than eight (8) years; Claimants' personally selected bonds that were alleged to have lost value; the account was a buy and hold account managed solely by the Claimants; the account was managed on a 100% non-discretionary basis and it was the Claimant who selected and ordered the Financial Advisor to purchase the bonds for the account and, in addition, the Claimants received all information from, inter alia, Market Reports, "Red-Herrings" and personal research, often selecting the bond before the Financial Advisors were aware of the pending underwriting.

The Financial Advisors were never asked to make any recommendation of securities and only acted as a conduit to the Citigroup Global Markets, Inc.'s Bond Desk and bond inventory and nothing more than order takers, never even being asked to concur in the selection of the security.

Claimants voluntarily withdrew the claims, with prejudice, during the early stages of the discovery process and that materially affects the Claimants'

credibility. A comparison of factual allegations set out in the initial letter to the Respondent were refuted by documentary evidence and testimony.

Claimant Aldus Chapin was highly sophisticated and had extensive experience with running in-house fixed income departments at major international banking institutions.

- I. All other relief requests are denied.

It is ORDERED that all references to *Aldus N. Chapin and Chapin Family Trust v. Citigroup Global Markets, Inc. and TD Ameritrade, Inc.*, FINRA Dispute Resolution Arbitration No. 17-03437, be expunged from the CRD records of Andrea Frezza (CRD# 1067271) and Judith Leahy (CRD# 1379577).

Enter,

A handwritten signature in black ink, consisting of a stylized capital letter 'A' enclosed within a circle. The signature is positioned above a horizontal line.

J.S.C.

HON. ARTHUR F. ENGORON