

Cole v Financial Indus. Regulatory Auth., Inc.
2019 NY Slip Op 33512(U)
November 25, 2019
Supreme Court, New York County
Docket Number: 654222/2019
Judge: W. Franc Perry
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Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch

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

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

RONALD COLE,

Petitioner,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
(FINRA),

Respondent.

INDEX NO. 654222/2019

MOTION DATE 09/09/2019

MOTION SEQ. NO. 001

**DECISION, ORDER AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9
were read on this motion to/for

CONFIRM/DISAPPROVE AWARD/REPORT

Petitioner Ronald Stillman Cole ("Petitioner" or "Mr. Cole"), by his attorneys, Wetz Law 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 *Ronald Stillman Cole v. Morgan Stanley and J.P. Morgan Securities, LLC*, FINRA Case Number 18-03265 (the "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 Irwin Wetz, Esq., with Exhibits A and B annexed thereto, which include a true and correct copy of the arbitrator's Award recommending expungement of the underlying occurrences from Petitioner Ronald Stillman Cole's Central Registration Depository ("CRD") and FINRA's letter, dated July 11, 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 Wetz Law P.C., attorneys for Petitioner, it is hereby ORDERED and ADJUDGED that the Petition is hereby granted solely to that portion of the arbitrator's Award in the Arbitration recommending expungement, and is confirmed consistent with the below:

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

1. The Arbitrator recommends the expungement of all references to Occurrence Number 158191 from registration records maintained by the Central Registration Depository, for Claimant Ronald Stillman Cole (CRD# 1434325), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ronald Stillman Cole 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant testified credibly as to facts and circumstances of claims that the customer purchased stock in IPO and then filed claims against the brokerage firm and Claimant when the stock price fell. The customer sought to avoid paying commissions. The brokerage firm sued the customer for commissions and the matter settled with the customer paying the brokerage firm.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 980884 from registration records maintained by the Central Registration Depository, for Claimant Ronald Stillman Cole (CRD# 1434325), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ronald Stillman Cole 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons: Claimant testified credibly as to facts and circumstances of claims that the customer asked Claimant to purchase stock in the company the customer worked for, during the tech boom era, and then filed claims against the brokerage firm and Claimant when the stock price fell. The customer's claim was denied by the brokerage firm and the matter was not settled.

3. The Arbitrator recommends the expungement of all references to Occurrence Numbers 983367, 815939 and 1004430 from registration records maintained by the Central Registration Depository, for Claimant Ronald Stillman Cole (CRD#1434325), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ronald Stillman Cole 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and The claim, allegation, or information is false.

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

Although Claimant only dealt with the husband, one or both of the accounts in question was/were co-owned by a husband and wife. Claimant testified

credibly as to facts and circumstances of claims that the customers opened two accounts: an asset management account which was not managed by Claimant, and a joint account which was managed by Claimant. Claimant testified that in accordance with the customers' instructions, the joint account had an "aggressive" investment objective, in line with the tech boom era. The customers alleged that Claimant engaged in unauthorized trading, churning of the account, and making unsuitable purchases of securities, for both accounts, and other misdeeds. The customers filed multiple complaints bearing different occurrence numbers, some of which were duplicative, and each of which asserted different losses. Claimant provided a contemporaneous and credible, full explanation of his dealings with the customers, and review of the related Disclosure Occurrence Composite supports Claimant's testimony.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1036920 from registration records maintained by the Central Registration Depository, for Claimant Ronald Stillman Cole (CRD# 1434325), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ronald Stillman Cole 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and The claim, allegation, or information is false.

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

Although Claimant only dealt with the husband, the brokerage account was apparently co-owned/named with the wife. Claimant testified credibly as to facts and circumstances of the claims. Claimant testified that he spoke frequently on the phone with the customer (husband) who appeared to be a moderately sophisticated investor. The customers bought and sold large cap tech stocks and were very "hands on" with Claimant. The customers filed their claims when the value of their account decreased.

5. The Arbitrator recommends the expungement of all references to Occurrence Number 1123541 from registration records maintained by the

Central Registration Depository, for Claimant Ronald Stillman Cole (CRD# 1434325), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ronald Stillman Cole 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant testified credibly as to facts and circumstances of the claims. He stated that the customer was a sophisticated investor and very smart individual. Claimant testified that the customer moved his accounts with Claimant when Claimant changed brokerage firms, evidencing his confidence in Claimant. The customer had both discretionary and managed accounts. The latter were managed by the brokerage's asset management division.

Claimant testified that he and the customer comanaged the discretionary account. Claimant pointed out that the complaint letter from the customer's attorney in 2003, alleged that Claimant failed to close the managed account when instructed to do so in 2000. Claimant testified that he was not in control of the managed account that was being handled by the brokerage firm's asset management division.

It is further ORDERED and ADJUDGED that the Award is confirmed and that all references to Occurrence Numbers 158191, 980884, 983367, 815939, 1004430, 1036920 and 1123541 be expunged from the FINRA CRD records of Ronald Stillman Cole (CRD# 1434325).

NOV 25, 2019
DATE

Deborah A. Kaplan
Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch

W. FRANC PERRY, J.S.C.

CHECK ONE:

☒	CASE DISPOSED	
☒	GRANTED	☐ DENIED
☐	SETTLE ORDER	
☐	INCLUDES TRANSFER/REASSIGN	

☐	NON-FINAL DISPOSITION	
☐	GRANTED IN PART	☐ OTHER
☐	SUBMIT ORDER	
☐	FIDUCIARY APPOINTMENT	☐ REFERENCE