

**Monk v Financial Indus. Regulatory Auth. (FINRA),
Inc.**

2020 NY Slip Op 30380(U)

February 10, 2020

Supreme Court, New York County

Docket Number: 650341/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

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JON MONK

Petitioner,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY
(FINRA), INC.,

Respondent.

INDEX NO. 650341/2020

MOTION DATE 02/07/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 001)
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, it is

ORDERED that the application of Petitioner Jon M. Monk (“Petitioner” or “Mr. Monk”), by his attorneys, Bressler, Amery & Ross, P.C., for an Order pursuant to CPLR § 7510 to confirm the arbitrator’s Award in an arbitration before the Financial Industry Regulatory Authority ("FINRA"), captioned Wendy A. Davies, as Trustee of the Wendy A. Davies Revocable Trust dated 3-16-07 and as Custodian for the UTMA Accounts ***-*2383 and ***-*2385 v. Merrill Lynch, Pierce, Fenner & Smith, Inc., FINRA Dispute Resolution Arbitration No. 17-01335 (the "FINRA Arbitration") is **granted**. And it is further

ORDERED and ADJUDGED that all references to Wendy A. Davies, as Trustee of the Wendy A. Davies Revocable Trust dated 3-16-07 and as Custodian for the UTMA Accounts ***-*2383 and *****2385 v. Merrill Lynch, Pierce, Fenner & Smith, Inc., FINRA Dispute Resolution Arbitration No. 17-01335, be expunged from the CRD records of Jon M. Monk (CRD #5287297). **CASE DISPOSED.**

Petitioner Jon M. Monk ("Petitioner" or "Mr. Monk"), by his 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 Wendy A. Davies, as Trustee of the Wendy A. Davies Revocable Trust dated 3-16-07 and as Custodian for the UTMA Accounts ***-*2383 and ***-*2385 v. Merrill Lynch, Pierce, Fenner & Smith, Inc., FINRA Dispute Resolution Arbitration No. 17-01335 (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 Logan S. Fisher, Esq., with exhibits A through D annexed thereto, which include a copy of the FINRA arbitration panel's Award recommending expungement of this matter from Jon M. Monk's Central Registration Depository ("CRD") and FINRA's letter to Petitioner dated May 23, 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 and ADJUDGED that the Petition is hereby granted with respect to 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:

1. The Panel recommends the expungement of all references to the above captioned arbitration from registration records maintained by the Central Registration Depository (“CRD”), for Respondent Jon M. Monk (CRD # 5287297), with the understanding that, pursuant to Notice to Members 0416, Respondent Jon M. Monk must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

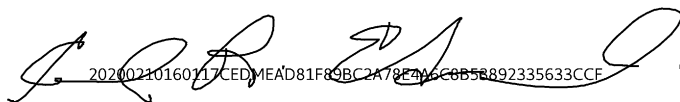
Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents. Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false. The Panel has made the above Rule 2080 finding based on the following reasons:

Davies alleged there were unauthorized transactions in her trust account and the trust accounts of her two children. The questioned transactions in her son’s trust account were coordinated with Davies’ brother in order to cover her son’s college expenses and with her full participation. In Davies’ daughter’s account, through e-mails and account statements, she fully participated and authorized those transactions. Similarly for Davies’ trust account, she invested in a plan her husband had for his accounts which she received full disclosure documents. Davies did not raise any questions about unauthorized trading until years after the transactions and her account had automatic rebalancing, which she was aware of since it was a selling point on the plan. Consequently, those transactions were also authorized. Davies also alleged churning in her account. That account was a managed account where the customer paid no commissions. There was no economic incentive to make unnecessary transactions. Lastly, Davies alleged her accounts were misrepresented. However, there were no misstatements pointed out. Therefore, the arbitrators concluded that the original claim was clearly erroneous and false.

It is **ORDERED and ADJUDGED** that all references to Wendy A. Davies, as Trustee of the Wendy A. Davies Revocable Trust dated 3-16-07 and as Custodian for the UTMA Accounts ***-*2383 and ****2385 v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,FINRA Dispute Resolution Arbitration No. 17-01335, be expunged from the CRD records of Jon M. Monk (CRD #5287297). And it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Respondent.


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2/10/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE