

Cahill v Financial Industry Regulatory Auth., Inc
2020 NY Slip Op 31291(U)
April 17, 2020
Supreme Court, New York County
Docket Number: 651204/2020
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

EDWARD MICHAEL CAHILL JR.,

INDEX NO. 651204/2020

Petitioner,

MOTION DATE

- v -

MOTION SEQ. NO. 1

**FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC. (FINRA),**

MOTION CAL. NO.

Respondent.

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits

█
█
█

Cross-Motion: Yes X No

Petitioner Edward Michael Cahill Jr. (“Petitioner” or “Claimant”) has commenced this special proceeding for an Order pursuant to CPLR § 7510 to confirm the arbitration panel’s Award in an arbitration before the Financial Industry Regulatory Authority, Inc. (“FINRA”), captioned *Edward Michael Cahill v. American Capital Partners LLC, et al.*, FINRA Case No. 18-04124 (the “Arbitration”).

Upon reading the papers submitted to the Court, including the Petition to Confirm an Arbitration Award Pursuant to CPLR § 7510, a copy of the FINRA arbitration panel’s Award (the “Award”) recommending expungement of this matter from Petitioner’s Central Registration Depository (“CRD”) and FINRA’s Response stating that it does not oppose the application, and after due deliberation having been had thereon,

NOW, upon the application of Petitioner, it is hereby:

ORDERED that the Petition is hereby granted without opposition solely to that portion of the arbitration panel’s 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 hearing, and the post-hearing submissions, 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 211160 from registration records maintained by the CRD for Claimant (CRD # 2310758) with the understanding that, pursuant to Notice to Members 04-16, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Pursuant to Rule 13805 of the Code of Arbitration Procedure (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; 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

The underlying claim involved a claim of unauthorized trading and churning made in 1997. Claimant was technically assigned as the registered person on the customer's account as his employer was in the process of being sold. However, he had no interaction of any sort with the customer and was not involved in any sales practice acts or violations regarding the account. The firm investigated the complaint and denied it. Nothing further was done by the customer.

2. The Arbitrator recommends the expungement of all references to occurrence number 283615 from registration records maintained by the Central Registration Depository ("CRD"), for Claimant (CRD# 2310758), with the understanding that, pursuant to Notice to Members 04-16, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

The matter involved a claim of an unsuitable investment in Microsoft around the time of the so-called tech crash in 1998. Claimant recalled that the customer was a highly sophisticated investor with a speculative, aggressive growth profile. Microsoft was then and is now a suitable investment for such purposes. The claim was investigated by the firm, and by the NASD, which took no action.

3. The Arbitrator recommends the expungement of all references to occurrence number 787818 from registration records maintained by the Central Registration Depository (“CRD”), for Claimant (CRD# 2310758), with the understanding that, pursuant to Notice to Members 04-16, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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

The claim in this matter, almost 20 years old, involved an alleged failure to sell a position in Fruit of the Loom common stock. Claimant testified that there had been no such instruction from the client, which would have been essentially counter-intuitive from the representative’s financial perspective. The claim was denied by the firm and subsequently went to arbitration. After a three day hearing on the merits, a unanimous NASD panel dismissed it in its entirety.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: APRIL 17, 2020

ENTER:  _____
J.S.C.

HON. EILEEN A. RAKOWER

Check one: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**