

Kuhn v American Portfolios Fin. Servs., Inc.
2020 NY Slip Op 33915(U)
November 24, 2020
Supreme Court, New York County
Docket Number: 655075/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JIMMY WILLIAM KUHN,

Index No.: **655075/2020**

Petitioner,

ORDER AND JUDGEMENT

-against -

**AMERICAN PORTFOLIOS FINANCIAL
SERVICES, INC.**

Respondent.
-----x

Hon. Debra A James:

This is an action by Jimmy William Kuhn (“Petitioner”) to confirm an arbitration award pursuant to CPLR § 7510. Respondent American Portfolios Financial Services, Inc. (“Respondent”), has received notice and does not oppose the action.

Petitioner has been a registered representative affiliated with Respondent, a securities broker-dealer and member of the Financial Industry Regulatory Authority (“FINRA”), since 2009.

Petitioner was the subject of two customer complaints, one in 2008 and the other in 2009 (collectively, the “Customer Complaints”) that were received and settled by his prior firm after his resignation, without his input into the settlement decisions, nor his contribution to the settlement amounts.

Pursuant to FINRA’s rules, the Customer Complaints were required to be reported on Petitioner’s industry record (as occurrence numbers 1433789 and 1491646) in the Central Registration Depository (known as the CRD), through which it remains publicly disclosed on the FINRA BrokerCheck website.

On or about December 11, 2019, Petitioner initiated an arbitration by filing a Petition for Expungement of the Customer Claims with FINRA Dispute Resolution, pursuant to FINRA Rule 13805 and FINRA Rule 2080 (FINRA Arbitration Number 19-03656, Jimmy William Kuhn vs. American Portfolios Financial Services, Inc., the “Expungement Arbitration”).

As reflected in the Award rendered in the Expungement Arbitration (the “Expungement Award”), FINRA assigned an arbitrator (the “Arbitrator”) that heard argument from counsel and testimony from Petitioner, and reviewed Petitioner’s FINRA BrokerCheck Report, the pleadings, exhibits and other documentation provided by the parties and considered other relevant factors.

Following the Expungement Arbitration hearing, the Arbitrator delivered the Expungement Award dated July 17, 2020, granting Petitioner’s request for expungement and setting forth the detailed reasons and grounds for his decision. With respect to each of the Customer Complaints, the Arbitrator made the following affirmative findings of fact: The claim, allegation, or information is false.

In the Expungement Award, the Arbitrator recommended the expungement of all references to the Customer Complaints from Petitioner’s registration records. The Arbitrator’s recommendation was made with the understanding that Petitioner must obtain confirmation of the Expungement Award from a court of competent jurisdiction pursuant to FINRA Rule 2080 before FINRA will expunge the Customer Claim from his records.

Pursuant to CPLR § 7510, Petitioner now seeks confirmation from this court of the arbitration award.

DISCUSSION

CPLR § 7510

CPLR § 7510 states: “The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a

ground specified in section 7511.” N.Y. C.P.L.R. § 7510. The First Department, in interpreting CPLR § 7510, gives “the word ‘shall’ its ordinary meaning” and the Court is “directed unequivocally by CPLR 7510 to confirm an arbitration award if a timely application is made whenever the award is not vacated or modified under CPLR 7511.” Bernstein Family Ltd. P’ship v. Sovereign Partners, L.P., 66 A.D.3d 1, 5 (1st Dept 2009). As long as the Respondent is not seeking to vacate or modify the award, the court does not run into the problem of inserting itself into dispute resolution when only confirmation of an arbitration award has been sought. See id at 7.

Here, Petitioner, in seeking the confirmation of the Expungement Award, has satisfied all of the procedural requirements. Petitioner has made a timely application within one year of receipt of the award. (Petition, ¶ 20) Respondent has had ample notice and has made no motion to modify or to vacate the Expungement Award and does not contest Petitioner’s efforts to have the Expungement Award confirmed by this court.

FINRA’s Rule and Venue

FINRA Rule 2080(a) provides that a petitioner, who seeks to expunge information from his CRD record, “must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.” Additionally, FINRA Rule 2080(b) requires a petitioner seeking expungement under 2080(a) to name FINRA as an additional party and serve FINRA with all appropriate documents, unless FINRA waives this obligation upon request of petitioner. FINRA granted Petitioner’s request for a waiver of the obligation to name and serve FINRA. (Petition, Exhibit D)

Venue is proper as there is no specification giving sole jurisdiction to a different tribunal and the underlying FINRA Arbitration was heard in New York County. See e.g., Big-W Const. Corp. v. Horowitz, 24 Misc. 2d 145, 148 (Sup. Ct. 1959), aff’d, 14 A.D.2d 817 (2d Dept

1961) (“In the absence of a specification in a contract or submission to arbitration giving sole jurisdiction to a particular tribunal ‘the supreme court for the county in which one of the parties resides or is doing business, or in which the arbitration was held, shall have jurisdiction”).

Therefore, this Court has jurisdiction to confirm the Expungement Award.

Accordingly, it is,

ADJUDGED that the petition is granted, and the Expungement Award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ADJUDGED that this Court directs entry of judgment of the Expungement Award; *and it is further*

ADJUDGED that there be an expungement of any mention of the Customer Complaints (occurrence numbers 1433789 and 1491646) from Petitioner’s CRD (CRD number 3260491) and BrokerCheck records.

Dated: NOV 24 2020, 2020
New York, New York



Hon. Justice Debra A James