

**Tsikitas v Financial Indus. Regulatory Auth., Inc.**

2021 NY Slip Op 30710(U)

February 26, 2021

Supreme Court, New York County

Docket Number: 657255/2020

Judge: Eileen A. Rakower

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At IAS Part 6 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 26 day of February, 2021.

PRESENT:

HON: Eileen A. Rakower  
Justice.

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

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NICHOLAS GEORGE TSIKITAS,

Petitioner,

v.

FINANCIAL INDUSTRY REGULATORY  
AUTHORITY, INC. (FINRA),

Nominal Respondent.

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Index No. 657255/2020

**DECISION AND ORDER**

Motion Sequence 1

Petitioner Nicholas George Tsikitas (“Petitioner” or “Mr. Tsikitas”), by his attorneys, Weltz Kakos Gerbi Wolinetz Volynsky LLP, 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 Nicholas George Tsikitas v. J.D. Nicholas & Associates, Inc. and Trident Partners Ltd., FINRA Case Number 19-03029, before the FINRA Office of Dispute Resolution (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 Nicholas George Tsikitas's Central Registration Depository ("CRD") and FINRA's letter, dated December 16, 2020, 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, **with no opposition,**

NOW, upon the application of Wetz Kakos Gerbi Wolinetz Volynsky LLP, 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 expungement 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 1978327 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure ("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:

The preponderance of the evidence shows that this claim is false. Claimant testified in essence that the customer was a high net worth individual with investment experience who wanted to speculate with some of his money. This was a non-discretionary account. Claimant recommended positions over the years and profits were made; then some losses occurred because of the market. The customer eventually closed the account but did not complain about the losses. In fact, Claimant heard of no complaints until 5 and ½ years later, when a case was brought with FINRA, with Cold Spring representing the customer. The claim was settled for a nominal amount. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement. Each of these documents was also signed when the customer moved his account from a corporate account into an individual account. The testimony of high net worth is also supported by the customer's tax returns. Claimant testified that he settled the case in part because the customer's representative (Cold Spring) agreed not to solicit any more customers to sue him. This settlement agreement between Claimant and Cold Spring, dated 07/30/18, offered and accepted as an additional exhibit in this case, confirms Claimant's testimony.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1949871 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure ("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:

The preponderance of the evidence shows that this claim is false under FINRA Rule 2080(b)(1)(c). Claimant testified in essence that the customer was a high net worth individual with investment experience who wanted to speculate with some of his money. This was a non-discretionary account. Claimant recommended just two positions. Both were profitable, but then the customer was inactive. The account

was then moved to another representative. There were some unrealized losses and the customer's daughter brought a case before FINRA three months before the customer died. Claimant testified that the amount of losses was incorrect and overstated. Claimant settled the case in order to avoid litigation expenses. The claim was settled for a nominal amount. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options account agreement, and an options disclosure agreement. The testimony is also supported by a contemporaneous memorandum written by Claimant as well as account statements.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1734017 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure ("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:

The underlying complaint involved multiple customers. The firm settled the complaints of these customers. Claimant testified that he did not contribute to the settlement.

**Customer D.S.:**

The preponderance of the evidence shows that this claim is false under FINRA Rule 2080(b)(1)(c). The customer had claimed unauthorized and unsuitable transactions. Claimant testified in essence that the customer was a high net worth individual with investment experience who wanted to speculate with some of his money. Claimant testified that the customer gave oral trade authorizations and received trade confirmations and monthly account statements. Claimant did two options trades with him, which ended up causing losses. The customer had complained about an unauthorized trade but then upon receiving proof of the authorization, withdrew. Then the customer parted ways with Claimant but left the account open. Though the account remained open, Cold Spring contacted him to bring the underlying FINRA case alleging unauthorized trading as part of a

group of people represented by Cold Spring. The customer runs a cattle ranch in Montana and testified at the expungement hearing, represented by two lawyers. I did not find his testimony credible. He claimed that he did not know about options trading and that he didn't get confirmations. On cross-examination, however, he confirmed his signature on the option account agreement and agreed that he was a wealthy man (\$10 million net worth) with investment experience with speculation as an objective. The customer also admitted that at least in the beginning, he did receive confirmations. He claimed that he didn't read statements but then he admitted that he did. He claimed that in one case, Claimant was supposed to sell the position but sold only half. Claimant countered that it was a limit order and that he therefore could only sell half. The customer admitted that Cold Spring contacted him to bring the underlying case. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options account agreement, and an options disclosure agreement.

**Customer J.B.:**

The preponderance of the evidence shows that this claim is false under of FINRA Rule 2080(b)(1)(c). Claimant testified in essence that the customer was a high net worth individual with investment experience who wanted to speculate with some of his money. This was a non-discretionary account. The customer incurred some unrealized losses with Claimant because of the 2008 market collapse, but never complained. The customer ended up transferring open positions which would have been profitable had he held them. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement, and the customer's tax returns. It also contains 3 activity letters sent to the customer.

**Customer C.S.:**

The preponderance of the evidence shows that this claim is clearly erroneous under Standard 1 of FINRA Rule 2080(b)(1)(a). Claimant testified that he was not the registered representative for the customer. Claimant was not the broker's supervisor, but as the owner of the firm, would help him out from time to time. In this situation, he assisted the broker by talking to the customer twice when the broker was unavailable and also did one stop loss order for the broker. In general, in this account, opened for three years, the customer had some losses but didn't complain until the underlying case was brought. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement, none of which contained Claimant's name.

**Customer D.G.:**

The preponderance of the evidence shows that this claim is false under FINRA Rule 2080(b)(1)(c). Claimant testified in essence that the customer was a high net

worth individual with investment experience who wanted to speculate with some of his money. This was a non-discretionary account. Claimant had a close relationship with the customer, speaking to him daily. All sales were made only after oral confirmation by the customer. The customer had some profits and some losses. The customer had no complaints but left because he was consolidating accounts. He became part of this larger case. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement, and activity letters confirming that the account is engaged in short-term trading.

**Customers J. & L. M.:**

The preponderance of the evidence shows that this claim is erroneous under FINRA Rule 2080(b)(1)(a). Claimant testified in essence that he was not the registered representative with the customers and had no involvement with the customers who were involved in the case brought in FINRA by Cold Spring. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement; Claimant does not appear to be the registered representative on record.

**Customer S.H.:**

The preponderance of the evidence shows that this claim is false under Rule 2080(b)(1)(c). Claimant testified in essence that the customer was a high net worth individual with investment experience who first opened an account with growth as an objective but, unsatisfied with the lack of returns, opened another investment account with speculation as an objective. He also had an IRA and opened a fourth account, also for speculation. The accounts were non-discretionary. Claimant had a close relationship with the customer, speaking to him often and even visiting him in order to make sure that he was comfortable with his account. In addition, the customer monitored his account online. Claimant testified that the customer subsequently went to another brokerage firm and ended up bringing a complaint against Cape Securities for liquidating the portfolio that Claimant had suggested for him. He also testified in an action against Cape securities in favor of Claimant's brokerage firm. The first time that the customer complained about Claimant was in the arbitration brought by Cold Spring. Claimant's testimony is supported by the documents, including a signed opening account agreement indicating a high net worth with speculation as an objective, an options disclosure agreement, and a margin account agreement.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1642879 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure (“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 in essence that the customer was a high net worth individual with investment experience who wanted to speculate with some of his money. This was a non-discretionary account. Claimant testified that, basically, the customer traded in options and initially had some gains but then some unrealized losses because of the market. When the customer complained, Claimant settled in order not to have to incur litigation costs. This case was not a filed arbitration. The firm settled the claim with no contribution from Claimant. Claimant’s testimony is supported by the documents including a signed opening account agreement indicating a high net worth with speculation as an objective, an options risk awareness document, and a margin account agreement.

5. The Arbitrator recommends the expungement of all references to Occurrence Number 1421907 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure (“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 in essence that the customers were a high net worth couple with investment experience who wanted to speculate with some of their money. This was a non-discretionary account. Claimant had moved to a new firm whose opening

account documents had forms different from what he was used to. Claimant testified that, as a result, “speculation” was mistakenly not checked as an objective; however, on tape, the customer indicated that speculation was an objective. Claimant recommended shorting Lehman Bros; a limit order was placed but it was not executed because the market didn’t hit the limit. The next day Lehman Bros stock shot up, though temporarily, the customers were upset and transferred the account to another brokerage house. When they left Claimant, the customers’ losses were unrealized. The brokerage firm settled the case with the customers. Claimant is not mentioned in the settlement and he did not contribute to the settlement. Four years later, in 2012, the customers again attempted to open an account with the brokerage firm owned by Claimant (though with another broker) and signed documents indicating a high net worth and with speculation as an objective. Because of the prior issue with the customers, Claimant did not accept the customers as clients. Claimant’s testimony is supported by documents, including a contemporaneous 2008 memo written by Claimant in response to the settlement, a 2012 signed opening account document stating speculation as an objective and a signed 2012 “intent to maintain active account” (sent to customers by the brokerage to ensure that the customers understand that they are engaging in risky transactions).

6. The Arbitrator recommends the expungement of all references to Occurrence Number 1110413 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure (“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 in essence that he never did any transactions with the client who complained to Trident Partners and that the client did transactions only with another broker. This testimony was supported by the complaint letter by the customer, which does not mention Claimant but refers to another broker. According to Claimant, the complaint was ultimately “denied” by Trident Partners and it never went to arbitration.

- 7. The Arbitrator recommends the expungement of all references to Occurrence Number 1110410 from registration records maintained by the CRD for Claimant Nicholas George Tsikitas (CRD Number 2871712) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas George Tsikitas 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 of Arbitration Procedure (“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 that he was removed from this case prior to the hearing referenced in the Broker Check Report. Claimant testified in essence that the customer was the customer of another broker at Trident Partners and that Claimant was supposed to put in a stop loss order as a favor to the broker. Claimant admitted that he made an error in failing to put in the stop loss order; he then paid the \$1,000 to the customer to make up for the \$1,000 loss to the customer as a result. Claimant testified that he was not involved when the case went to arbitration and in fact testified on behalf of Trident Partners. This testimony is supported by the NASD Award, which names Claimant and states that Claimant did not make an appearance; and which held Trident Partners solely liable. The customer objected in writing to the expungement but did not provide any relevant information and his objection did nothing to alter the Arbitrator’s view.

It is further ORDERED and ADJUDGED that the Award is confirmed and that all references to Occurrence Numbers 1978327, 1949871, 1734017, 1642879, 1421907, 1110413, and 1110410 be expunged from the FINRA CRD records of Nicholas George Tsikitas (CRD # 2871712).

Enter,

ENTER:   
 J.S.C.  
**HON. EILEEN A. RAKOWER**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION