

Grimm v Financial Indus. Regulatory Auth., Inc.

2021 NY Slip Op 31383(U)

April 9, 2021

Supreme Court, New York County

Docket Number: 650864/21

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

At IAS Part 63 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 9 day of April, 2021.

PRESENT:

HON: Lawrence L. Love
Justice.

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

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THOMAS EDWARDS GRIMM,

Petitioner,

Index No. 650864/21

v.

DECISION AND ORDER

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC. (FINRA),

Respondent.

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Petitioner Thomas Edwards Grimm ("Petitioner" or "Mr. Grimm"), 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 Thomas Edwards Grimm v. Allied Millennial Partners, LLC, FINRA Case Number 19-02883, 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 Exhibit A annexed thereto, which include a true and correct copy of the arbitrator's Award recommending expungement of the underlying occurrences from Petitioner Thomas Edwards Grimm's Central Registration Depository ("CRD") and said application having regularly come on to be heard, and after due deliberation having been had thereon,

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 of Occurrence Numbers 1256240 and 1037709, 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 1256240 from registration records maintained by the CRD for Claimant Thomas Edwards Grimm (CRD Number 2702276) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Edwards Grimm 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 Occurrence dates from 2005 and is integrally tied to Grimm's decision to leave his then firm, Gunn Allen Financial, in March of that year. Grimm inherited the customer's account from another broker when the account and opening documentation was executed in 2002. It was to be a small (some \$12,000) trading account utilizing margin where appropriate. The account performed in line with expectations until it suffered some declines which necessitated margin calls. Subsequently the customer complained that the trading activities conducted with his knowledge were inappropriate. It appears that the complaint was triggered by Grimm's decision to leave the firm in March 2005. Grimm's testimony and the documents submitted in support of expungement indicate that there was no unauthorized use of margin and that the account was traded appropriately given the client's stated risk tolerance and objectives. The matter was settled by the firm directly with the customer to avoid the cost and expense of litigation. Grimm subsequently reimbursed the firm for part of the settlement amount. Neither agreement was conditioned on consent to expungement.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1037709 from registration records maintained by the CRD for Claimant Thomas Edwards Grimm (CRD Number 2702276) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Edwards Grimm 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.

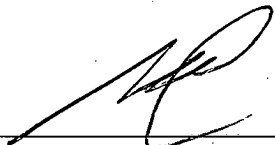
The Arbitrator has made the above Rule 2080 findings based on the following reasons:

In the spring of 1999, the customer, a short-term investor with an aggressive, speculative risk profile, alleged misuse of margin in his accounts with Grimm. He had a margin agreement with Grimm's then firm, Cambridge Capital, and when he could not meet a margin call, certain positions were

sold out pursuant to regulatory requirements. The testimony and documents indicate that the customer's margin transactions were in accord with his account objectives, were authorized and that Grimm complied with his instructions. Grimm settled the matter two years later for a nominal sum to avoid further expense of time and effort, the firm having gone out of business in the interim. The customer's General Release was not conditioned on his consent to expungement.

It is further ORDERED and ADJUDGED that the Award is confirmed to the extent that all references to Occurrence Numbers 1256240 and 1037709 be expunged from the FINRA CRD records of Thomas Edwards Grimm (CRD # 2702276).

Enter,



J.S.C.