

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

2021 NY Slip Op 32297(U)

October 26, 2021

Supreme Court, New York County

Docket Number: Index No. 654700/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LAURENCE LOVE **PART** **63M**

Justice

-----X

MARK MARTIAK

Petitioner,

- v -

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

Respondent.

-----X

INDEX NO. 654700/2021

MOTION DATE 09/16/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, the Petition is resolved as follows:

Petitioner Mark Martiak (“Martiak” or “Petitioner”), brings this Special Proceeding pursuant to Article 75 of the CPLR, seeking an order confirming the award issued in the arbitration held under the auspices of the FINRA Office of Dispute Resolution, captioned *Mark Matthew Martiak v. UBS Financial Services, Inc.*, FINRA Case No. 20-02348 (the “FINRA Arbitration”), recommending the expungement of all references to the FINRA Arbitration (Occurrence Number 1472510) contained in the Central Registration Depository (“CRD”) records for Martiak (CRD # 4607789).

Non-parties Joyce Rasmussen Balint and Edward Rasmussen (together, the “Rasmussens”) are the underlying customers concerning Occurrence Number 1472510 (the “Rasmussen Occurrence”). Ms. Rasmussen Balint, on behalf of Mr. Rasmussen, filed a customer complaint against Petitioner with UBS, which was reported on Petitioner’s registration records under Occurrence Number 1472510. Due to the Claimant’s Statement of Claim, Martiak’s public registration records with the CRD now contain references to the Rasmussen Occurrence. On or

about July 24, 2020, Petitioner filed a Statement of Claim in the Arbitration, seeking expungement of the Occurrence from his registration records. On April 13, 2021, FINRA held a video-conference hearing, with recorded audio, before the Arbitrator concerning Petitioner's request for expungement. After considering the pleadings, testimony and evidence presented at the hearing, the Arbitrator signed and acknowledged the Award, which, in full and final resolution of the issues submitted for determination, recommended that, upon confirmation of the Award by a court of competent jurisdiction, all references to the Occurrence be expunged from Petitioner's registration records maintained by CRD. 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. 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. (*See* 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 all references to the FINRA arbitration captioned *Mark Matthew Martiak v. UBS Financial Services, Inc.*, FINRA Case No. 20-02348 (Occurrence No. 1472510) from the CRD records for Mark Matthew Martiak (CRD No. 4607789) and BrokerCheck records.

<u>10/26/2021</u> DATE	 LAURENCE LOVE, 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"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE