

UBS Fin. Servs. Inc. v Financial Indus. Regulatory Auth., Inc.
2021 NY Slip Op 32838(U)
December 15, 2021
Supreme Court, New York County
Docket Number: Index No. 656016/2021
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: <u>HON. LAURENCE LOVE</u> <i>Justice</i> -----X UBS FINANCIAL SERVICES INC. Petitioner, - v - FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., Respondent. -----X	PART 63M INDEX NO. <u>656016/2021</u> MOTION DATE <u>12/6/2021</u> MOTION SEQ. NO. <u>001</u> DECISION + ORDER ON MOTION
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17
 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

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

This is an action by UBS Financial Services, Inc. (“Petitioner”) to confirm an arbitration award pursuant to CPLR § 7510. Respondent Financial Industry Regulatory Authority, Inc. (“Respondent”), has received notice and does not oppose the action. 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 *Elizabeth Ann Bennett, as Trustee of the Elizabeth Ann Bennett Trust and Samuel Lynn Bennett, as Trustee of the Samuel Lynn Bennett Trust vs. UBS Financial Services Inc.* (FINRA Case No. 20-01035) (the “FINRA Arbitration”) recommending that certain information contained in Central Registration Depository (“CRD”) records for Richard Mark Held (CRD #600760) (“Held”) and Ortal Shachar (CRD #2940760) (“Shachar”) be expunged

Non-parties Elizabeth Ann Bennett Trust and the Samuel Lynn Bennett Trust are the underlying customers concerning Occurrence Numbers 2072798 and 2072807 who filed customer complaints against Petitioner, which was reported on Held and Shachar’s registration records. Due

to the Claimant's Statement of Claim, Held and Shachar's public registration records with the CRD now contain references to said complaints. On or about March 30, 2020, Elizabeth Ann Bennett and Samuel Lynn Bennett commenced the FINRA Arbitration by filing a statement of claim (the "Statement of Claim") with the FINRA Office of Dispute Resolution. On or about June 10, 2020, Elizabeth and Samuel Bennett filed an Agreed Motion to File Amended Statement of Claim which substituted Elizabeth and Samuel Bennett in their capacities as trustees of their respective trusts as the Claimants in the FINRA Arbitration. On or about June 18, 2020, UBS filed its Answer to the Amended Statement of Claim (the "Answer") From July 12, 2021 through July 16, 2021, arbitrators Raymond P. Buschmann, Marcia Bonita Gevers, and Alexis Anne Washa, the duly appointed panel in the FINRA Arbitration conducted a recorded hearing (the "Hearing") so the parties could present testimony and evidence. Following the Hearing, on or about August 19, 2021, the Panel issued the Award denying the claims in the Amended Statement of Claim in their entirety, recommending the expungement of all references to Occurrence Number 2072798 from Richard Mark Held's (CRD #600760) Central Registration Depository records, and recommending the expungement of all references to Occurrence Number 2072807 from Ortal Shachar's (CRD #2940760) Central Registration Depository records. Pursuant to CPLR § 7510, Petitioner now seeks confirmation from this court of the arbitration award.

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,

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

ORDERED that this Court directs expungement of all references to Occurrence Numbers 2072798 and 2072807, respectively from the CRD records for Richard Mark Held (CRD #600760) and Ortal Shachar (CRD #2940760) and BrokerCheck records.

<u>12/15/2021</u>			
DATE		LAURENCE LOVE, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE