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| Fox v First Allied Sec., Inc. |
| 2022 NY Slip Op 30262(U) |
| January 10, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 655654/2021 |
| Judge: Laurence Love |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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WILLIAM FOX

Petitioner,

- v -

FIRST ALLIED SECURITIES, INC.,

Respondent.

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INDEX NO. 655654/2021

MOTION DATE 10/21/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11 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 William Frederick Fox ("Petitioner") to confirm an arbitration award pursuant to CPLR § 7510. Respondent First Allied Securities, Inc. ("Respondent"), has received notice and does not oppose the action.

Petitioner had been a registered representative affiliated with Respondent, a securities broker-dealer and member of the Financial Industry Regulatory Authority ("FINRA"), from November 3, 2014, through November 12, 2020. (See Petition, ¶ 2.)

Prior to becoming associated with Respondent, Mr. Fox was associated as a registered person with New England Financial, N/K/A MetLife Securities ("MetLife") from 1986 to 2014. (See Petition, ¶ 3.)

Petitioner was the subject of customer complaints in 2014 and 2016 (the "Customer Complaints") one of which was denied outright by MetLife and the other which was settled by MetLife as business decision in which Petitioner did not participate and to which he did not contribute. (See Petition, ¶ 6.)

Pursuant to FINRA's rules, the Customer Complaints were required to be reported on Petitioner's industry record (as Occurrence Numbers 1627533 and 1870631) in the Central Registration Depository (known as the CRD), through which it remains publicly disclosed on the FINRA BrokerCheck website. (*See* Petition, ¶ 10.)

On or about September 11, 2020, Petitioner initiated an arbitration by filing a Petition for Expungement of the Customer Complaints with FINRA Dispute Resolution, pursuant to FINRA Rule 13805 and FINRA Rule 2080 (FINRA Arbitration Number 20-03184, William Frederick Fox vs. First Allied Securities, Inc., the "Expungement Arbitration"). (*See* Petition, ¶ 12.)

In accordance with FINRA Rule 13805, the parties to the Expungement Arbitration and the arbitrator presiding thereover (the "Arbitrator") participated in a recorded hearing on May 28, 2021, to consider Petitioner's request for expungement of the Complaints. (*See* Petition, ¶ 14.)

As reflected in the Award rendered in the Expungement Arbitration (the "Expungement Award"), the Arbitrator considered the pleadings, the testimony and evidence presented at the expungement hearing, and decided in full and final resolution of the issues submitted for determination. (*See* Petition, ¶ 15.)

Following the Expungement Arbitration hearing, the Arbitrator delivered the Expungement Award dated June 3, 2021, granting Petitioner's request for expungement and setting forth the detailed reasons and grounds for his decision. The Arbitrator made the following affirmative finding of fact with respect to the Customer Complaint: The claim, allegation, or information is factually impossible or clearly erroneous. (*See* Petition, ¶ 16.)

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. (*See* Petition, ¶ 18.)

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

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. (*See* Petition, ¶ 23.) 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 E.)

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 (CRD Occurrence Numbers 1627533 and 1870631) from Petitioner’s CRD (CRD Number 1522234) and BrokerCheck records.

1/10/2022
DATE


LAURENCE LOVE, J.S.C.

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| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |