

Chi-Hong Chu v American Portfolios Fin. Servs., Inc.
2022 NY Slip Op 30499(U)
February 14, 2022
Supreme Court, New York County
Docket Number: Index No. 656839/2021
Judge: Laurence L. 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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CHI-HONG CHU

Petitioner,

- v -

AMERICAN PORTFOLIOS FINANCIAL SERVICES, INC.,

Respondent.

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INDEX NO. 656839/2021
MOTION DATE 12/20/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 8, 9, 10 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, it is

This is an action by Chi-Hong (Simon) Chu ("Petitioner") to confirm an arbitration award pursuant to CPLR § 7510. Respondent American Portfolios Financial Services, Inc. ("Respondent"), has received notice and does not oppose the action. (See Doc. No. 8, Notice of No Opposition and Acceptance of Service.) Since 2016, Petitioner has been a registered representative affiliated with Respondent, a securities broker-dealer and member of the Financial Industry Regulatory Authority ("FINRA") (See Petition, ¶ 1).

Petitioner was the subject of customer complaints in 2016 and 2017 (the "Customer Complaints") two of which were denied outright by the broker-dealers with whom Petitioner was registered at the time, and the other which was settled by the broker-dealer as a business decision in which Petitioner did not participate and to which he did not contribute (See Petition, ¶ 4). Pursuant to FINRA's rules, the Customer Complaints were required to be reported on Petitioner's industry record (as CRD Occurrence Numbers 1888825, 1922620 and 1961700) in the Central Registration Depository (known as the CRD), through which it remains publicly

disclosed on the FINRA BrokerCheck website (See Petition, ¶¶ 2 and 9).

On or about September 15, 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 20-03202, Chi-Hong (Simon) Chu vs. American Portfolios Financial Services, Inc., the “Expungement Arbitration”) (See Petition, ¶ 10).

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 5, 2021, to consider Petitioner’s request for expungement of the Complaints (See Petition, ¶ 12.) 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, ¶ 13).

Following the Expungement Arbitration hearing, the Arbitrator delivered the Expungement Award dated May 24, 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 and the claim, allegation, or information is false (See Petition, ¶ 13).

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, ¶ 15). 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, ¶ 20). 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 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 and ORDERED that the Petition is GRANTED, and the Expungement Award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ADJUDGED and ORDERED that this Court directs entry of judgment of the Expungement Award; and it is further

ADJUDGED and ORDERED that there be an expungement of any mention of the Customer Complaints (CRD Occurrence Numbers 1888825, 1922620 and 1961700) from Petitioner's CRD (CRD Number 4615119) and BrokerCheck records.

2/14/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: