

<b>Camarda v Financial Indus. Regulatory Auth., Inc.</b>
2022 NY Slip Op 34125(U)
December 7, 2022
Supreme Court, New York County
Docket Number: Index No. 150032/2021
Judge: Frank P. Nervo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. FRANK P. NERVO PART 04

*Justice*

-----X

VINCENT JEROME CAMARDA

Plaintiff,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,

Defendant.

-----X

INDEX NO. 150032/2021

MOTION DATE 02/22/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 54, 55, 59, 60, 66

were read on this motion to/for

DISMISSAL

Upon the forgoing papers, and oral argument held on October 18, 2022, (NYSCEF Doc. No. 66), the Court issues the below decision and order.<sup>1</sup>

Defendant Financial Industry Regulatory Authority (hereinafter “FINRA”) seeks to dismiss the action contending that, inter alia, plaintiff has engaged in a forum shopping by obtaining a Colorado so-ordered stipulation vacating an arbitration award rendered by FINRA without naming FINRA, or an actually adverse party, in that proceeding. FINRA further contends that the

<sup>1</sup> The Court notes that it directed the parties to order and file a copy of the stenographic record of oral argument within two weeks of same (NYSCEF Doc. No. 66 at p. 24 ln. 13); the parties failed to do so (NYSCEF Doc. No. 65). The Court, thereafter, again directed the parties to file the stenographic record and adjourned the instant motion (*id.*). The parties’ delay in complying with the Court’s directives has delayed the issuance of this decision and order.

matter is barred by the statute of limitations and fails to state a claim. Plaintiff opposes, contending that this Court must, effectively, afford full faith and credit to the Colorado stipulation or otherwise exercise its inherent equitable powers to vacate the arbitration award.

As relevant to this action, plaintiff is engaged in the sale of certain securities which requires plaintiff to register with defendant FINRA as a representative/broker-dealer. As part of its regulatory duties, FINRA maintains a registry where occurrences/complaints filed against FINRA registered representatives/broker-dealers are maintained. FINRA registered representatives or broker-dealers may petition to have these occurrences/complaints expunged from the registry via arbitration proceedings before FINRA.

This action relates to three occurrences from 2003 and 2004 listed on plaintiff's records maintained by defendant FINRA.<sup>2</sup> Plaintiff instituted FINRA arbitration expungement proceedings in 2018, and the FINRA arbitrator denied same. Thereafter, plaintiff brought an action in Colorado state court

---

<sup>2</sup> Occurrence numbers 1132412, 1211572, and 1205542.

seeking to vacate the FINRA arbitration award. That relief was granted on consent via stipulation by plaintiff and the only other named party in the Colorado action, plaintiff's employer. Plaintiff now seeks an order and judgment from a New York court vacating the FINRA arbitration award denying expungement. FINRA, by instant motion, seeks to dismiss the action in its entirety. The motion to dismiss must be granted for the following reasons.

As an initial matter, the complaint is time barred. The relief sought by plaintiff is equitable in nature and is, therefore, subject to a six-year statute of limitations (CPLR § 213). The occurrences at issue were filed to plaintiff's FINRA records in 2003 and 2004; and as plaintiff prays this Court to exercise its equitable authority expunging these occurrences, such relief was required to be sought sometime prior to approximately 2010.<sup>3</sup> Stated simply, plaintiff's time to seek equitable relief related to the 2003 and 2004 occurrences expired more than a decade ago.

[continued on following page]

---

<sup>3</sup> The Court notes that plaintiff instituted arbitration expungement proceedings in 2018, approximately eight years after the filing of the occurrences to his FINRA record.

Secondly, and assuming, *arguendo*, that the instant complaint was not time barred, the complaint seeks this Court to countenance an impermissible circumvention of the long-established Article 75 procedures governing vacatur of arbitration awards. Article 75 of the CPLR provides, in relevant part, that an action to vacate an arbitration award must be brought within one year of the award (CPLR §§ 7510 and 7511).

Here, rather than seek vacatur of the unfavorable FINRA arbitration award in New York state courts – the state where the arbitration proceedings occurred and where plaintiff resides – plaintiff instituted state court proceedings in Colorado seeking to vacate the FINRA arbitration award. Notably, plaintiff did not name the complainants in the FINRA arbitration or FINRA as parties in the Colorado action. The only “adverse” party in the Colorado proceedings was plaintiff’s former employer; consequently, there was effectively no adverse party in the Colorado proceedings, and plaintiff and his employer, the only other named party in the Colorado action, executed a stipulation to vacate the unfavorable FINRA arbitration award. Plaintiff then sought to re-arbitrate the expungements before FINRA, and FINRA denied access to the forum.

Plaintiff now contends that this Colorado stipulation vacating the FINRA award requires that this Court direct FINRA, not a party in that Colorado action, vacate its arbitration award. This Court will do no such thing; it is beyond cavil that, under these circumstances, an out-of-state judgment cannot be binding as against an unnamed indispensable non-party. “Thus, what plaintiff[] seek[s] is for the courts of New York to enforce a judgment that cannot be enforced in [Colorado]” (*Boudreaux v. State, Dept. of Transp.*, 11 NY3d 321 [2008]). Plaintiff’s attempts, in this action, to enforce an out-of-state judgment against a non-party with an indisputable interest in the outcome of said out-of-state action, and without serving notice of that out-of-state proceeding upon said non-party or naming same as a party, is, at a minimum, repugnant to the most basic principles of the rule of law. The advancement of such injudicious arguments may indeed be sanctionable per 22 NYCRR Part 130, as arguments proffered must not be complete devoid of merit; however, the Court declines to impose financial sanctions, at this time (*see e.g. Dank v. Sears Holding Mgmt. Corp.*, 69 AD3d 557 [2d Dept 2010]).

Thirdly, conspicuously absent from these proceedings is plaintiff’s former employer, the only other party named in the Colorado action and,

therefore, an indispensable party here. Consequently, dismissal is likewise required on this basis (*see* CPLR § 3211[a][10]).

Finally, FINRA rule 20.80 does not, as plaintiff contends, provide a private cause of action in New York Courts; rather, rule 20.80 governs arbitration expungement proceedings conducted before FINRA (*see* NYSCEF Doc. No. 8).

A cursory search of the Court's records reveals this is not the only matter in which a plaintiff seeks to enforce an out-of-state stipulation against FINRA in out-of-state actions where FINRA has not been named as a party or has not otherwise been provided notice of same (*see Lahoud v. Financial Industry Regulatory Authority, Inc.*, New York Index No. 653956/2020). Notably, and perhaps curiously, it appears that this *Lahoud* matter has identical facts, including a Colorado so-ordered stipulation.

Accordingly, it is

ORDERED that the motion to dismiss is granted in its entirety and the matter is dismissed, with prejudice; and it is further

ORDERED that the Clerk of the Court shall mark the matter disposed; and it is further

ORDERED that plaintiff's counsel shall serve a copy of this order via NYSCEF upon the Justice assigned in the *Lahoud v. Financial Industry Regulatory Authority, Inc.*, matter under New York Index No. 653956/2020, with courtesy copy to the chambers of the assigned Justice in that matter via certified mail; and it is further

ORDERED that plaintiff's counsel, the Law Office of Catherine M. Hedgeman and Mound Cotton Wollan & Greengrass, shall file proof of the aforementioned service via a letter to Justice Nervo, via NYSCEF under this index number and with courtesy copy to chambers in accordance with the Part IV Rules, within 10 days of this order. Failure to timely file proof of service may result in sanctions, in the Court's discretion; and it is further

ORDERED that plaintiff's counsel, the Law Office of Catherine M. Hedgeman and Mound Cotton Wollan & Greengrass, shall file a copy of this order via NYSCEF in conjunction with the complaint in all New York matters



pending against FINRA or where relief is sought following FINRA arbitration;  
and it is further

ORDERED that nothing in this order shall prohibit defendant FINRA  
from providing a courtesy copy of this order to the assigned Justice in other  
similar matters; and it is further

ORDERED that any relief sought not expressly addressed herein has  
nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/07/2022  
DATE

  
\_\_\_\_\_  
**HON. FRANK P. NERVO**

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART

J.S.C.  
 OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE