

Pickett v Financial Indus. Regulatory Auth., Inc.

2019 NY Slip Op 33639(U)

December 13, 2019

Supreme Court, New York County

Docket Number: 655718/2019

Judge: W. Franc Perry

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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. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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JAY PICKETT, JACOB MCKELVEY

Petitioner,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
(FINRA),

Respondent.

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INDEX NO. 655718/2019
MOTION DATE 10/30/2019
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

Petitioners Jay Windsor Pickett, III and Jacob M. McKelvey (“Petitioners”), through their attorneys, DLP Piper LLP (US), have duly applied for an Order pursuant to CPLR § 7510 to confirm the Arbitration Panel’s Award served on the parties on August 1, 2019, in an arbitration before the Financial Industry Regulatory Authority (“FINRA”), entitled Brian Leggett and Bryson Holdings, LLC v. Wells Fargo Clearing Services, LLC and Jay Windsor Pickett, III (FINRA Case No. 17-01077) (“Arbitration”).

Upon reading and filing the following papers submitted to the Court, including the Affirmation of Stefanie M. Wayco, Esq. and Petition to Confirm an Arbitration Award Pursuant to CPLR § 7510, with exhibits A and B annexed thereto, including a copy of the FINRA Arbitration Award and FINRA’s letter to Petitioners dated September 18, 2019 waiving the obligation under FINRA Rule 2080 to name FINRA as a party in this proceeding, and said application having regularly come on to be heard, and after due deliberation having been had thereon,

NOW, upon the application of DLA Piper LLP (US), attorneys for the Petitioners, it is hereby

ORDERED AND ADJUDGED that the Petition is hereby granted in all respects, and the Arbitration Panel's Award in the FINRA Arbitration, served on the parties on August 1, 2019, recommending expungement, is confirmed consistent with the below:

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Claimant Leggett is liable for and shall pay to Respondents the sum of \$51,000, representing costs incurred by Respondents in connection with this matter.
3. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and attorneys' fees, are denied.
4. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for Respondent Pickett (CRD #2041509) and Non-Party McKelvey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 and the Code of Arbitration Procedure ("Code"), the Panel had made the following Rule 2080 affirmative findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous; and
- The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Upon consideration of the full record of evidence, including the documents and testimony, the Panel finds that the claims asserted by Claimants against Respondent Pickett, and the allegations concerning Non-Party McKelvey set forth in Claimants' Statement of Claim, are without merit and false. Specifically, the Panel finds that the losses sustained by Claimants were solely caused by the trading strategy devised, implemented and undertaken by Claimant Leggett. None of Claimants' alleged losses were caused by Respondent Pickett's and/or Non-Party McKelvey's action, inaction, or advice. The Panel finds that neither Respondent Pickett nor Non-Party McKelvey engaged in any wrongful conduct. Claimant Leggett alleges that he was misled by both Respondent Pickett and Non-Party McKelvey. The Panel finds that neither Respondent Pickett nor Non-Party McKelvey misled Claimant Leggett in any way, and that these allegations are without merit and false. Claimant Leggett's testimony as to these issues was not credible.

By e-mail dated April 18, 2016 Claimant Leggett accused Non-Party McKelvey of misleading him with respect to a call option on Amazon. Claimant Leggett's testimony was that Claimant Leggett did not have option experience, did not know how options worked, that he relied on Non-Party McKelvey, and Non-Party McKelvey misled him. However, in a text message from Claimant Leggett to Non-Party McKelvey, dated April 13, 2016, Claimant Leggett stated, "anytime I've ever put in an option to sell it [sic] a certain strike it should automatically execute..." The Panel concluded from this text message that Claimant Leggett did have option experience, that his testimony to the contrary was untrue, and that his complaints about Non-Party McKelvey were false and untrue.

By e-mail dated November 8, 2016, Claimant Leggett complained to Respondent Pickett about the NXPI trades stating, "Jay, I'm [sic] not taking the loss on this trade..." Further, by e-mail to Respondent Pickett, dated November 11, 2016, Claimant Leggett stated, "Jay, I'm writing to comment about the matter below and let you know after further thought and review of our discussion, that there was simply a misunderstanding about our discussion..." Based upon Respondent Pickett's testimony at the hearing, and Claimant Leggett's November 11, 2016 e-mail, the Panel

concluded that Claimant Leggett’s complaints about Respondent Pickett were false and untrue.

The Panel’s decision to grant the expungement requests of Non-Party McKelvey and Respondent Pickett is buttressed by the Panel’s conclusion that Claimant Leggett was not a credible witness, and his complaints about Non-Party McKelvey and Respondent Pickett were false and untrue. Claimant Leggett’s testimony was inconsistent and untrue, his testimony was in conflict with the documents entered into evidence, and his testimony was not corroborated by the documents. Accordingly, the Panel finds that the information to be expunged has no meaningful regulatory or investor protection value.”

ORDERED AND ADJUDGED that all references to the FINRA Arbitration captioned Brian Leggett and Bryson Holdings, LLC v. Wells Fargo Clearing Services, LLC and Jay Windsor Pickett, III (FINRA Case No. 17-01077) be expunged from the FINRA Central Registration Depository (“CRD”) records of Petitioners Jay Windsor Pickett, III (CRD # 2041509) and Jacob McKelvey (CRD # 5288433).

12/13/19.
DATE

WFP

W. FRAN PERRY, J.S.C.

**HON. W. FRAN PERRY, III
J.S.C.**

CHECK ONE:

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

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

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE