

Cregan v Blackner

2019 NY Slip Op 33745(U)

December 18, 2019

Supreme Court, New York County

Docket Number: 656054/2019

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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INDEX NO. 656054/2019

JOHN CREGAN, JAMES ERTMANN, BENJAMIN FOSTER,

MOTION DATE 10/28/2019

Petitioners,

MOTION SEQ. NO. 001

- v -

LESLEY BLACKNER, RICHARD STONE,

DECISION, ORDER AND
JUDGMENT

Respondents.

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

Petitioners John Cregan, James Ertmann, Benjamin Foster (“Petitioners”), have duly applied for an Order pursuant to CPLR 7510 to confirm the arbitrator’s award in an arbitration before the Financial Industry Regulatory Authority (“FINRA”), captioned *Lesley Blackner and Richard Stone v. John Francis Cregan, James Joseph Ertmann and Benjamin Stephen Foster*, FINRA Case Number 17-03426 (the “Arbitration”).

Upon reading and filing the following papers submitted to the Court, including the Petition to Confirm an Arbitration Award Pursuant to CPLR 7510, the Affirmation in Support, with Exhibits annexed thereto, which include a true and correct copy of the arbitrator’s Award recommending expungement of the underlying occurrences from Petitioners Central Registration Depository (“CRD”) and FINRA’s letter 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 Boies Schiller Flexner, LLP, attorneys for Petitioners, it is hereby

ORDERED and ADJUDGED that the Petition is hereby granted solely to that portion of the arbitrator's Award in the Arbitration recommending expungement, and is confirmed consistent with the below:

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD for Respondent Creegan (CRD# 846069), Respondent Ertmann (CRD# 2747524) and Respondent Foster (CRD# 4562080), with the understanding that, pursuant to Notice to Members 04-16, Respondents 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 of the Code of Arbitration Procedure (the "Code"), the Panel has made the following Rule 2080 affirmative findings of fact with respect to all Respondents:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

Statement Common to All Claims:

1. None of the Respondents were involved with the transaction that resulted in the Claimants' losses and resultant claims asserted in this arbitration.
2. Claimants' claims are based on regulations and rules that are not applicable to the facts and circumstances of this case, and are therefore, false.

Claimants approached Respondents' then-employer, Barclays, to consummate a transaction that Claimants had developed, analyzed and

structured through the advice and counsel of a third-party investment advisor and their third-party attorney(s). Claimants approached Barclays because they needed a trading desk, not an investment relationship. The third-party attorney "raised serious concerns about the suitability of the transaction for [Claimants]," but Claimants continued with the transaction.

Claimants' multiple claims centered on various alleged violations of a presumed customer relationship which did not exist by agreement and law.

As to Respondent Cregan:

Respondent Cregan was the only remaining Barclays employee from a previous relationship Claimants had with Barclays. Perforce, he was Claimants' initial contact. Respondent Cregan referred Claimants to other Barclays employees to effectuate the transaction in question.

Respondent Cregan had no involvement with the development, execution or closing of the transaction in question. Prior to the closing of the transaction, Respondent Cregan was approached by Claimants in an effort to "hedge" the original transaction by entering into a second transaction. Respondent Cregan referred Claimants to other Barclays employees to evaluate the proposed second transaction; Barclays ultimately declined to participate in it. Respondent Cregan had no involvement with the evaluation of the second transaction either.

As to Respondent Ertmann:

Respondent Ertmann had no contact with Claimants at any time and had no involvement with the development, execution or closing of the transaction in question.

As to Respondent Foster:

The only contact Respondent Foster had with Claimants was to route Claimants' call to other parties who could effectuate the transaction. Respondent Foster had no other involvement with Claimants, nor the development, execution or closing of the transaction itself.

And it is further

ORDERED and ADJUDGED that the Award is confirmed and that all references to the -
above-referenced arbitration captioned *Lesley Blackner and Richard Stone v. John Francis
Cregan, James Joseph Ertmann and Benjamin Stephen Foster*, FINRA Case Number 17-03426,

be expunged from the FINRA CRD records of Respondent Creegan (CRD# 846069), Respondent Ertmann (CRD# 2747524) and Respondent Foster (CRD# 4562080).

12-18-19
DATE

W.F.
W. FRANC PERRY, J.S.C.
HON. W. FRANC PERRY, III
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: