

Corrigan v American Portfolios Fin. Servs., Inc.

2020 NY Slip Op 30333(U)

January 10, 2020

Supreme Court, New York County

Docket Number: 657192/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

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ANDREW CORRIGAN

Petitioner,

- v -

AMERICAN PORTFOLIOS FINANCIAL SERVICES, INC.,

Respondent.

INDEX NO. 657192/2019

MOTION DATE 12/18/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. CAROL R. EDMEAD:

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

It is hereby

ORDERED that Petitioner's motion to confirm an arbitration award pursuant to CPLR
7510 (Mot. Seq. 001) is resolved in accordance with the annexed order; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

CASE DISPOSED

This is an action by Andrew Gerard Corrigan (“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.

Petitioner has been a registered representative affiliated with Respondent, a securities broker-dealer and member of the Financial Industry Regulatory Authority (“FINRA”), since 2003.

In June of 2010, a public customer (“Customer”) of Petitioner filed a FINRA Arbitration Claim (the “Customer Claim”). Petitioner was not named as a respondent in the Customer Claim, and there was no claim for damages from Petitioner contained therein. The Customer Claim named American Portfolios as respondent and alleged generally that Customer’s investments were unsuitable. It included causes of action for breach of fiduciary duty, breach of contract, negligence/negligent misrepresentation/omission, common law fraud and negligent supervision and demanded compensatory damages of approximately \$100,000 as well as attorneys’ fees, interest, costs and punitive damages.

Respondent American Portfolios investigated the allegations in the Customer Claim and filed a Statement of Answer in which the firm generally and specifically denied the allegations and presented evidence that Customer’s investments were in fact suitable for her and well in line with her needs and objectives at the time.

Even though the Customer Claim was denied, pursuant to FINRA’s rules it was nevertheless required to be reported on Petitioner’s industry record (as occurrence number

1519274) in the Central Registration Depository (known as the CRD), through which it remains publicly disclosed on the FINRA BrokerCheck website.

On or about April 5, 2019, Petitioner initiated an arbitration by filing a Petition for Expungement of the Customer Claim with FINRA Dispute Resolution, pursuant to FINRA Rule 12805 and FINRA Rule 2080 (FINRA Arbitration Number 19-00940, Andrew Gerard Corrigan vs. American Portfolios Financial Services, Inc., the “Expungement Arbitration”).

Counsel attempted to notify Customer of the Expungement Arbitration and her right to be heard on the matter and learned that Customer had passed away in 2012. In accordance with FINRA Rule 12805, the parties to the Expungement Arbitration and the arbitrator presiding thereover (the “Arbitrator”) participated in a recorded, in-person hearing on September 12, 2019 to consider Petitioner’s request for expungement.

As reflected in the Award rendered in the Expungement Arbitration (the “Expungement Award”), the Arbitrator heard argument from counsel and testimony from Petitioner, and reviewed Petitioner’s FINRA BrokerCheck Report, the pleadings, exhibits and other documentation provided by the parties and considered other relevant factors.

Following the Expungement Arbitration hearing, the Arbitrator delivered the Expungement Award Dated September 16, 2019, granting Petitioner’s request for expungement and setting forth the detailed reasons and grounds for his decision. With respect to the Customer Claim, the Arbitrator made the following affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; Petitioner 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.

In the Expungement Award, the Arbitrator recommended the expungement of all references to the Customer Claim 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.

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

DISCUSSION

CPLR § 7510

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 FINRA award, has satisfied all of the procedural requirements. Petitioner has made a timely application within one year of receipt of the award. (Petition, ¶ 17) Respondent has had ample time and notice but has made no motion to modify or to vacate 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. (Petition, Exhibit D)

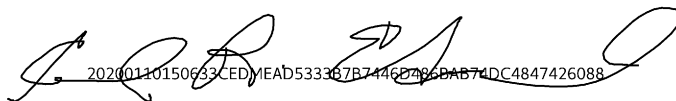
Venue is proper as there is no specification giving sole jurisdiction to a different tribunal and the underlying Expungement Arbitration was heard in New York County. See e.g., Big-W Const. Corp. v. Horowitz, 24 Misc. 2d 145, 148 (Sup. Ct. 1959), aff'd, 14 A.D.2d 817 (2d Dept 1961) ("In the absence of 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 direct expungement of the arbitration from Petitioner's CRD records.

Accordingly, it is,

ORDERED that the petition is granted, and the arbitration award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ORDERED that this Court directs entry of judgment of the arbitration award; and it is further

ORDERED that there be an expungement of any mention of the Customer Claim (occurrence number 1519274) from Petitioner's CRD and BrokerCheck records.


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1/10/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE