

**Dvorznak v Financial Indus. Regulatory Auth., Inc.**

2020 NY Slip Op 34140(U)

December 10, 2020

Supreme Court, New York County

Docket Number: 654493/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

At IAS Part 35 of the Supreme Court of the State of New York, held in and for the County of New York, at the Supreme Court, 60 Centre Street, New York, New York, on the 10th day of December, 2020.

PRESENT:

HON: CAROL R. EDMEAD  
Justice.

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

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DANIEL DVORZNAK,

Petitioner,

Index No. 654493/2020  
**MS #001**

**DECISION AND ORDER**

v.

FINANCIAL INDUSTRY REGULATORY  
AUTHORITY, INC. (FINRA),

Nominal Respondent.

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Petitioner Daniel Dvorznak (“Petitioner” or “Mr. Dvorznak”), by his attorneys, Weltz Kakos Gerbi Wolinetz Volynsky LLP, has 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 Daniel Dvorznak v. J.D. Nicholas & Associates, Inc. and Aegis Capital Corp., FINRA Case Number 19-03022, before the FINRA Office of Dispute Resolution (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 of Irwin Wetz, Esq., with Exhibits A and B annexed thereto, which include a true and correct copy of the arbitrator's Award recommending expungement of the underlying occurrences from Petitioner Daniel Dvorznak's Central Registration Depository ("CRD") and FINRA's letter, dated August 28, 2020, 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 Wetz Kakos Gerbi Wolinetz Volynsky LLP, attorneys for Petitioner, 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 expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Number 1734018 from registration records maintained by the CRD for Claimant [Daniel] Dvorznak (CRD Number 2809819) with the understanding that, pursuant to Notice to Members 04-16, Claimant [Daniel] Dvorznak 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 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

On his investment account application, the customer indicated that his investment objective was speculation, that he had fifteen years experience in mutual funds and bonds, forty years experience in stocks, and five years experience in options. He also opened a margin account and an options account. His time horizon was short term. The customer filed an arbitration claim against J.D. Nicholas and Associates, Inc. and Daniel Dvorznak. In paragraph 10 of the Statement of Claim, he alleged churning and unauthorized/unsuitable investments. The claim was settled. Mr. Dvorznak testified credibly that the customer was a sophisticated investor, who authorized purchases of highly leveraged products and his losses were the result of market turmoil. This case is a classic example of the customer blaming the broker for his risky investment strategy. I find that the allegations in the customer's Statement of Claim were false.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1931843 from registration records maintained by the CRD for Claimant [Daniel] Dvorznak (CRD Number 2809819) with the understanding that, pursuant to Notice to Members 04-16, Claimant [Daniel] Dvorznak 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 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

On his investment account application, the customer indicated that his investment objective was speculation and that his investment knowledge was excellent. His time horizon was ten to fifteen years. He opened an options account. The customer was a retired postal worker and a corn and soybean farmer with experience in commodities speculation. Mr. Dvorznak recommended six options purchases with long call dates and the purchase of a bank note. The options were for Apple, Visa, Facebook, JP Morgan and AmerisourceBergen stocks, all S&P 500 companies. The investment strategy for each transaction was thoroughly explained to the customer. The stock market experienced a dramatic sell-off in January 2016. Mr. Dvorznak recommended

that the customer stay the course and remain patient with his long term call date options. The customer chose to liquidate in a down market and he sustained losses. He continued to receive the interest payments on the bank note. The customer filed an arbitration against Aegis Capital Corporation. He alleged that the options recommendations were highly speculative and unsuitable, putting his retirement savings at extreme risk. He further alleged that the investments were not explained to him. The claim was settled. Mr. Dvorznak testified credibly that he limited his recommendations for options investments to well-regarded companies and the options had long call dates. He testified that each transaction was thoroughly explained to the customer. This is an example of an investor getting nervous during a market downturn and then blaming the broker for his losses. The investments were suitable and they fit the customer's investment objective. I find that the allegations in the customer's Statement of Claim were false.

It is further ORDERED and ADJUDGED that the Award is confirmed and that all references to Occurrence Numbers 1734018 and 1931843 be expunged from the FINRA CRD records of Daniel Dvorznak (CRD # 2809819).

DATED: 12/10/2020

Enter,

  
HON. CAROL R. EDMÉAD  
J.S.C.

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,J.S.C.