

Sherer v Financial Indus. Regulatory Auth., Inc.

2021 NY Slip Op 31196(U)

April 8, 2021

Supreme Court, New York County

Docket Number: 650204/2021

Judge: Frank P. Nervo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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 IAS MOTION 4

Justice

-----X

ELLIOT SHERER

Plaintiff,

- v -

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. (FINRA),

Defendant.

-----X

INDEX NO. 650204/2021
MOTION DATE 01/11/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, the motion is decided in accordance with the annexed decision and order of even date.

Any requested relief not addressed therein has nevertheless been considered and is hereby denied.

4/8/2021 DATE

FRANK P. NERVO, J.S.C.

Form with checkboxes for CASE DISPOSED, GRANTED, DENIED, NON-FINAL DISPOSITION, GRANTED IN PART, OTHER, SETTLE ORDER, SUBMIT ORDER, INCLUDES TRANSFER/REASSIGN, FIDUCIARY APPOINTMENT, REFERENCE.

At IAS Part IV 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 8th day of April, 2021.

PRESENT:

HON: Frank P. Nervo
Justice.

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

-----X
:

ELLIOT HOUGH SHERER,

Petitioner, :

Index No. 650204/2021

v. :

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC. (FINRA), :

Nominal Respondent. :

DECISION AND ORDER

-----X

Petitioner Elliot Hough Sherer (“Petitioner” or “Mr. Sherer”), 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 Elliot Hough Sherer v. Aegis Capital Corp., FINRA Case Number 20-00935, 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 Elliot Hough Sherer's Central Registration Depository ("CRD") and FINRA's letter, dated December 30, 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 1914367 from registration records maintained by the CRD for Claimant Elliot Hough Sherer (CRD Number 2719671) with the understanding that, pursuant to Notice to Members 04-16, Claimant Elliot Hough Sherer 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 findings of fact:

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

The customer alleged excessive commissions were charged, excessive use of margin and poor recommendations. The customer settled for a fraction of the claimed damages. A review of the documents and testimony submitted demonstrate that the customer's investment strategy was speculation. Claimant supplied the customer with regular detailed statements and the customer had online access to his account that he used regularly. The evidence further demonstrates that at least one of the trades in question was unsolicited and was dramatically affected by the unexpected death of the company's founder. Claimant explained that the only reason he settled with the customer is that he had a personal situation that needed constant attention that prevented him from traveling necessary for his defense. The Arbitrator finds no evidence in the record that supports the customer allegations and recommends expungement.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1560440 from registration records maintained by the CRD for Claimant Elliot Hough Sherer (CRD Number 2719671) with the understanding that, pursuant to Notice to Members 04-16, Claimant Elliot Hough Sherer 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 findings of fact:

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

The customer alleged churning, unauthorized trading, breach of fiduciary duty and breach of contract. The customer settled for a fraction of the claimed damages. A review of the documents and testimony submitted demonstrate that the customer's investment strategy was speculation. Claimant supplied customer with regular detailed statements. The record reflects that the customer executed margin agreement and received regular trade confirmations. The customer assumed the risks of these trades. Claimant explained that the only reason he settled with the customer is that he had a personal situation that needed constant attention that prevented him from traveling necessary for his defense. The Arbitrator finds no

evidence in the record that supports the customer allegations and recommends expungement.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1325006 from registration records maintained by the CRD for Claimant Elliot Hough Sherer (CRD Number 2719671) with the understanding that, pursuant to Notice to Members 04-16, Claimant Elliot Hough Sherer 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 findings of fact:

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

The customer alleged excessive trading, unsuitability, breach of fiduciary duty and negligence. The Arbitrator reviewed the testimony and documents submitted that includes the records from the Brokerage House investigation into the allegations. At the conclusion of their investigation, they found no evidence to support the allegations and they were denied. After the Arbitrator’s review of the evidence, the Arbitrator agrees. As such, the Arbitrator finds no evidence in the record that supports the customer’s allegations and recommends expungement.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1308635 from registration records maintained by the CRD for Claimant Elliot Hough Sherer (CRD Number 2719671) with the understanding that, pursuant to Notice to Members 04-16, Claimant Elliot Hough Sherer 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 findings of fact:


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

The customer alleged failure to follow instructions which resulted in an unauthorized transaction and unauthorized transfer of account. The Arbitrator reviewed the testimony and documents submitted that includes the records from the Brokerage House investigation into the allegations. At the conclusion of their investigation, they found no evidence to support the allegations and they were denied. After the Arbitrator's review of the evidence, the Arbitrator agrees. As such, the Arbitrator finds no evidence in the record that supports the customer allegations and recommends expungement.

It is further ORDERED and ADJUDGED that the Award is confirmed and that all references to Occurrence Numbers 1914367, 1560440, 1325006 and 1308635 be expunged from the FINRA CRD records of Elliot Hough Sherer (CRD # 2719671).

Enter,


_____, J.S.C.
HON. FRANK P. NERVO
J.S.C.