

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.

BARRY SNYDER,

Petitioner,

vs.

ELIZABETH SNYDER, individually and  
as Trustee of Elizabeth Snyder Revocable  
Trust U/A/D 8/18/1999 amended and  
restated 3/6/2012, as Managing Member of  
Linkster Holdings, LLC and on behalf of  
the Elizabeth Snyder IRA,

Respondents.

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**PETITION TO VACATE ARBITRATION AWARD  
AND SUPPORTING MEMORANDUM OF LAW**

Barry Snyder, petitions, under section 682.13, Florida Statutes, to vacate an arbitration award and, in support, states:

**I. BACKGROUND**

Petitioner Barry Snyder and Respondents Elizabeth Snyder, the Elizabeth B. Snyder Revocable Trust, and Linkster Holdings, LLC were recently involved in an arbitration before the Financial Industry Regulatory Authority (“FINRA”). An award was issued in the FINRA arbitration on September 27, 2021 (the “Award”). Petitioner and Respondent Elizabeth Snyder are residents of Florida. The Elizabeth B. Snyder Revocable Trust is a revocable trust formed under Florida law, and Linkster Holdings, LLC is a Florida limited liability company. This is a petition to vacate an arbitration award and, as a result, this Court has jurisdiction under section

682.13, Florida Statutes, and venue is appropriate in this circuit because the respondents either reside here or conduct business here.

## **II. ARBITRATOR JACOBS' FAILURE TO DISCLOSE IS A VIOLATION OF FINRA'S OWN RULES AND STANDARDS**

### **Introduction**

Petitioner, a respondent in the FINRA arbitration proceeding, was deprived of an opportunity for a fair hearing because one of the Arbitrators, Andrea Jacobs, Esq., failed to disclose a significant business relationship with a company of which Petitioner is the Chief Executive Officer. Despite actual knowledge of the potential conflict within days of the commencement of the hearings, Ms. Jacobs remained silent. Petitioner, who had no actual knowledge of the business relationship at the time, discovered the non-disclosure only after the hearings were concluded and the Award was issued. The facts outlining this conflict are set forth in the affidavit of Barry Snyder (the "Snyder Affidavit"), which is attached as Exhibit 1.

### **FINRA's Rules Mandate Prompt and Continuing Disclosure by Arbitrators**

There can be no dispute that Arbitrator Jacobs' failure to disclose her connection to Petitioner violated FINRA Arbitrator disclosure rules. FINRA Rules require "[e]ach potential arbitrator," such as Ms. Jacobs, to "make a reasonable effort to learn of, and...disclose...any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding...." *FINRA Code of Arbitration Procedure for Industry Disputes* Rule 12405(a) (2011) (the "FINRA Code," a true copy of which is annexed to the Snyder Affidavit as Exhibit A.) Rule 12405 goes on to enumerate specifically required disclosures, including:

- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) **Any existing or past financial, business, professional, family, social, or other relationships or circumstances with any party**, any party's representative, or anyone who the arbitrator is told may be a witness in the proceeding, **that are likely to affect impartiality of might reasonably create an appearance of partiality or bias**;

(3) Any such relationship or circumstances involving members of the arbitrator's family or the arbitrator's current employers, partners, or business associates....

*Id.* (emphasis added).

"[D]isclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative." FINRA Dispute Resolution, *Arbitrator's Guide* (2021) ("*Guide*," a true copy of which is annexed hereto as Exhibit 2), at p. 17; *accord*, *Your Duty to Disclose* (FINRA 2016), (a true copy of which is annexed hereto as Exhibit 3), at p. 8. FINRA arbitrators are repeatedly urged to disclose "all ties" "no matter how remote they may seem" and to "consider all aspects of their professional and personal lives." *Your Duty to Disclose*, at p. 8.

The obligation to disclose all such matters is a continuing duty that "requires an arbitrator who accepts appointment to an arbitration proceeding to disclose, at any stage of the proceeding, any such interests, relationships, or circumstances that arise or are recalled or discovered."

Rule 12405(b); *Guide*, at p. 17.

### **The FINRA Arbitrator's Guide Requires Arbitrators to Disclose Conflicts at Three Distinct Points in the Arbitration Process**

The Guide requires Arbitrators to disclose potential conflicts at no fewer than three distinct points in the process: "Upon Appointment to Serve," "After Appointment to Serve," and "at Hearings."

FINRA arbitrators must disclose any relationship, experience and background information that may affect – or even appear to affect – the arbitrator's ability to be impartial or

that might create “even an *appearance* of partiality or bias” or lead the parties to believe that the arbitrator will be unable to render a fair decision. *Id.* at pp. 6, 8 (emphasis in original).

As set forth in the Snyder Affidavit, Arbitrator Jacobs knowingly failed to disclose a potentially lucrative business transaction with a company of which Petitioner is the Chief Executive Officer. (Snyder Affidavit, ¶¶ 10 - 11.) Arbitrator Jacobs herself acknowledged the potential conflict to a third party just days prior to the hearing, but failed to disclose it to FINRA, the parties, or their counsel, despite multiple opportunities to do so, including at the commencement of the hearings, by which time it is beyond challenge that she knew of its existence. (Snyder Affidavit, ¶ 12.) Clearly, Arbitrator Jacobs violated FINRA Rule 12405 and FINRA’s established guidelines.

### **III. THE NON-DISCLOSURE COMPELS VACATUR**

Arbitrator Jacobs’ violation of FINRA disclosure rules compels vacatur of the Award. Section 682.13(1), Florida Statutes, sets forth the grounds upon which an arbitration award should be vacated. This statute, provides, in relevant part, for vacatur where:

“(a) There was:

1. Evident partiality by an arbitrator appointed as a neutral arbitrator;”

§ 682.13 (1)(b)-(1), Fla. Stat.

An arbitrator’s award must be vacated when there was “evident partiality” by an arbitrator because “any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias.” *Citigroup Global Markets, Inc. v. Berhorst*, No. 11-80250-CIV, WL 5989628, at \*3 (S.D. Fla. Jan. 20, 2012). It is not necessary to show “that an arbitrator had an actual conflict of interest.”

Instead, it is sufficient **“if the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists.”** *University Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1339 (11th Cir. 2002) (emphasis added). “To disqualify an arbitrator, it need not be shown that bias influenced his judgment, but only that there was a circumstance tending to bias that judgment.” *Int’l Ins. Co. v. Schrager*, 593 So. 2d 1196, 1196 (Fla. Dist. Ct. App. 1992) (quoting *Gaines Construction Co. v. Carol City Utilities, Inc.*, 164 So.2d 270, 272 (Fla. 3d DCA 1964)). “An arbitrator is required to be no less impartial than a juror sitting in the trial of a cause. If he fails in this his usefulness as an arbitrator is destroyed.” *Gaines Const. Co.*, 164 So. 2d at 272.

“When that showing has been made, vacatur is required.” *Citigroup Global Markets, Inc. v. Berhorst*, No. 11-80250-CIV, WL 5989628, at \*3 (S.D. Fla. Jan. 20, 2012) (citing *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d at 1201). The Snyder Affidavit clearly demonstrates that Arbitrator Jacobs knew that Petitioner would be appearing before her just days after learning that he was also the Chief Executive Officer of a company to whom she was being considered for a lucrative engagement, yet spent an entire week sitting in judgment of him at the hearings, without disclosing that knowledge.

Section 10(a)(2) of the Federal Arbitration Act similarly provides for vacatur of arbitration awards “where there was evident partiality or corruption in the arbitrators, or either of them.” In non-disclosure cases like this one, evident partiality exists when an “arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists” or that creates a reasonable impression of bias. *Univ. Commons-Urbana, Ltd. v. Universal Constructors, Inc.*, 304 F.3d at 1339. Arbitrator Jacobs knew that an *actual* conflict existed yet withheld that knowledge from FINRA and the parties.

“Once it is established that the arbitrator actually knew of, yet failed to disclose potentially prejudicial facts which could impair his judgment,” courts apply an “irrebutable presumption requiring the award to be set aside.” *Middlesex Mut. Ins.*, 675 F.2d at 1200-01.

Here, there can be no doubt that a reasonable person would be led to believe that a conflict existed: FINRA’s own Rules emphatically require that arbitrators disclose the very facts that Arbitrator Jacobs failed to disclose, an “existing or past financial, business...or other relationship or circumstances with any party....” The fact that Arbitrator Jacobs “actually knew of, yet failed to disclose, potentially prejudicial facts ... [raises an] irrebutable presumption requiring the award to be set aside.” *Id.* There was no justification for Ms. Jacobs’ non-disclosure, especially given the temporal proximity of the prospective business relationship and the hearings. The Award should be vacated.<sup>1</sup>

#### IV. CONCLUSION

Based on the foregoing authorities and reasons and the facts established in the Snyder Affidavit, Petitioner Barry Snyder, respectfully requests that the Court issue an Order vacating the Award, and for such further and other relief as the Court deems fair and appropriate.

Respectfully,

Boca Raton, Florida  
October 26, 2021

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<sup>1</sup> While a letter was sent on July 22, 2021, to Southeast Highway to Mr. Snyder’s attention disclosing Ms. Jacobs as a potential transaction participant as Mr. Snyder attests in his Affidavit, he did not have an opportunity to review the letter until after the Award was issued. Snyder Affidavit at ¶ 10. In any event, even if a party is put “on notice” of a potential conflict, “such would not be sufficient to support of a finding of waiver [since] courts have held that ‘[waiver] applies only where a party has acted with full knowledge of the facts.’” *PFS Investments Inc. v. Deshazor*, Case No. 13-28368- CA-25 (Fla.Cir.Ct., Oct 11, 2013) (vacating arbitration award) (quoting *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d @ 1201).