

2022-00340 / Court: 270

CAUSE NO. _____

WILLIAMS KEEN BUTCHER,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff/Movant,	§	
	§	
vs.	§	
	§	HARRIS COUNTY, TEXAS
INTERNATIONAL ASSETS ADVISORY,	§	
LLC,	§	
	§	
Defendant/Respondent.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL UNOPPOSED MOTION TO VACATE ARBITRATION
AWARD**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Petitioner Williams Keen Butcher, who files this, his Petition to Vacate an Arbitration Award, and in support thereof would respectfully show the Court the following:

**I.
DISCOVERY CONTROL PLAN**

1. Plaintiff seeks non-monetary relief only. Discovery is intended to be conducted under Level 2 Rule 190.3 of the Texas Rules of Civil Procedure.

**II.
PARTIES**

2. Movant Butcher is an individual residing in Galveston County and may be served for all purposes in this litigation through his undersigned attorney of record, Seth I. Robinson, Robinson Law, 1135 Heights Boulevard, Houston, Texas 77008.

3. Respondent IAA is a Florida limited liability company with a principal place of business in Orlando, Orange County, Florida, and may be served via its registered agent of Myra Nicholson, Esq., 390 North Orange Avenue, Suite 750, Orlando, FL 32801.

III. JURISDICTION AND VENUE

4. This court has jurisdiction over the controversy because the court is vested with authority to vacate arbitration awards within its equitable powers.

5. Venue is proper pursuant to Texas Civil Practice & Remedies Code § 15.002 whereas the matters giving rise to the Petition occurred in Harris County.

IV. FACTUAL INTRODUCTION

6. Plaintiff/Petitioner Williams Keen Butcher (“Petitioner” or “Butcher”) files this Petition to Vacate an Arbitration Award rendered through the Financial Industry Regulatory Authority (“FINRA”) arbitration forum, and by necessity names Defendant/Respondent International Assets Advisory, LLC (“Respondent” or “IAA”) as the Respondent although the wrongdoing occurred by one of the arbitrators who sat on the FINRA Panel and whereas IAA notified Petitioner it does not oppose this Petition.

7. The Arbitration Proceeding from which the Award this Petition seeks to vacate issued was a proceeding in which Petitioner sought to have a customer complaint removed from his FINRA records, said record being known as a CRD. In order to do so, Petitioner filed a FINRA arbitration naming IAA as the Respondent whereas IAA was the broker-dealer which was required to disclose the customer complaint on the CRD. IAA, as stated in the Award,

supported the expungement. However, unbeknownst to the parties, one of the arbitrators, Jeff Kilgore, breached his Oath of Arbitrator by failing to report a serious historical incident claiming misconduct in his services as an arbitrator (in the particular case Arbitrator Kilgore failed to disclose he served as Panel Chairperson) expressly violating FINRA Rules and Guidelines for appointment of arbitrators. There was no reason to suspect the wrongdoing until an illogical 2-1 award denying expungement in the FINRA arbitration was rendered, a true and accurate copy of which is attached as **Exhibit A**. Only via a forensic-level review of Arbitrator Kilgore did his failure to disclose a motion to vacate for grievous serious misconduct in 2008 become evident.

8. The underlying FINRA arbitration was captioned *Williams Keen Butcher vs. International Assets Advisory, LLC* and assigned FINRA Case No. 21-01438. The arbitration proceeded under FINRA rules to be heard “according to the three arbitrator intra-industry case provisions between associated persons or between or among firms and associated persons as described in FINRA Rule 13806(B)(2).”

9. In accordance with FINRA rules, the Movant and Respondent undertook a process of selecting, striking and ranking rank ten arbitrators from each of three categories: 1) Public Chairperson; 2) Public; and 3) Non-Public.

10. Ensuing from this process, a panel comprised of Thomas A. Martin – Public Arbitrator; Chairperson; 2) Jeff Kilgore – Public Arbitrator; and (3) Anita Lynne Wiggins, Non-Public Arbitrator; was entered by FINRA to hear the case.

11. A crucial component of the FINRA arbitration process is the “Oath of Arbitrator,” an aspect of the FINRA arbitration forum to which itself FINRA ascribes the appropriate level of importance – the “*cornerstone of FINRA arbitration*.”

12. A true and accurate copy of the Arbitrator Oath submitted by Arbitrator Kilgore once he was appointed as a Non-Public Arbitrator to hear the case is attached hereto as **Exhibit B** and clearly states at Question 9 on Page 7 that Arbitrator Kilgore was not notified or aware of any Motion to Vacate on a matter for which he served as an arbitrator.

13. The case was heard via a Zoom meeting through and by the Houston, Texas FINRA offices on November 29, 2021.

14. The panel rendered the 2-1 split award against the Petitioner attached as **Ex. A** and denied the expungement request with Arbitrator Kilgore denying the expungement.

**V.
ARGUMENT IN SUPPORT OF VACATING THE ARBITRATION AWARD**

15. The arbitration panel exceeded its authority and the Award denying expungement should be vacated in accordance with the Federal Arbitration Act, 9 U.S.C.A §1 et seq. ("FAA")¹ and/or the Texas Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rem Code ("TAA") by Arbitrator Kilgore’s failure to disclose and concealment of *In The Matter of the*

¹ The sale of securities has been held to involve interstate commerce. *See id.*; *Williams v. Cigna Fin. Advisors, Inc.*, 56 F.3d 656, 659 (5th Cir.1995); *Eurocapital Group., Ltd. v. Goldman Sachs & Co.*, 17 S.W.3d 426, 430 (Tex.App.-Houston [1st Dist.] 2000, no pet.) (recognizing that account agreement concerning sale of securities involved interstate commerce). this matter involves interstate commerce via the subject matter relating to sale of securities and therefore this court may apply the Federal Arbitration Act when reviewing this matter.

Arbitration Between T Bradley Sprague and wife, Jeannette Sprague, Claimants, vs. Laidlaw & Company, Ltd. and Steve R. Hill, Respondents, FINRA Case No. 07-02520. This 2008 FINRA arbitration was subject to a motion to vacate in which serious misconduct was alleged against Arbitrator Kilgore, who in *Sprague* is alleged to have, among other misconduct, refused to grant postponement of a FINRA hearing when presented with a physician's statement that a party's counsel was suffering from deep vein thrombosis and to avoid activities involving prolonged activities involving driving or sitting, including travel, among other allegations of wrongdoing. The motion to vacate ultimately concluded with an agreed judgment *modifying the judgment* and removing fees assessed against a party.

16. The untruthful oath submitted by Arbitrator Kilgore is evidenced by 2009 Travis County District Court Cause, *Sprague et al. v. Laidlaw, et al.*,” No. D-1-GN-09-000068, in which the FINRA Award identified as 07-02520 was the issue of a Motion to Vacate and in which the serious misconduct allegations were made against Arbitrator Kilgore and the imperfect Award was eventually modified via Agreed Judgment. See true accurate copies of the Counterclaim/Motion to Vacate and Agreed Judgment, true and accurate copies of which are attached respectively as **Exhibits “C” and “D.”**

17. The failure of Arbitrator Kilgore to disclose this serious history involving his service as an arbitrator (in this case *Chairperson*) is in direct violation of FINRA Rule 13408 which governs the disclosures required of arbitrators in advance of arbitration.

18. FINRA Rule 13408 specifically provides that “[e]ach potential arbitrator must make a reasonable effort to learn of and must disclose to the Director, any circumstances

which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding.”

19. The failure of Arbitrator Kilgore to disclose the *Sprague* Motion to Vacate denied the Movant a full and fair opportunity to consider Arbitrator Kilgore as a fair arbitrator and certainly denied the Movant an opportunity whether to “accept the composition of the panel” as the Movant did when each arbitrator, including Arbitrator Kilgore represented that he or she had nothing further to disclose in accordance with the continuing disclosure requirements of Rule 13408. Had Arbitrator Kilgore made the 2008 *Sprague* disclosure and movant been given full and fair opportunity consider Arbitrator Kilgore’s true background as a fair arbitrator, Movant would have evaluated the circumstances of Arbitrator Kilgore’s alleged misconduct in *Sprague* and likely used an available strike to remove Arbitrator Kilgore from those arbitrators available to serve on the panel to hear Movant’s case.

20. Arbitrator disclosures are of *paramount importance* to the FINRA Arbitration process whereas the FINRA Arbitrator Guide (a true and accurate copy attached hereto as **Exhibit E**) specifically admonishes arbitrators:

Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator’s duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect-or even appear to affect-the arbitrator’s ability to be impartial and the parties’ belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrator, the parties and the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: **make the disclosure**.

FINRA’s Arbitrator’s Guide at Page 17 [Emphasis in original]

**VI.
PRAYER FOR RELIEF**

WHEREAS the arbitration panel was not appointed in accordance with FINRA procedure as provided in the parties' agreement because Arbitrator Kilgore failed to abide by FINRA Rule 13408 and failed to make disclosure of the *Sprague* motion to vacate thus violating "the cornerstone of FINRA arbitration," the Court should vacate the award as the arbitrators "exceeded their powers" in reaching the award pursuant to the FAA Federal Arbitration Act, 9 U.S.C.A §1 et seq. ("FAA")² and/or the Texas Arbitration Act.

Respectfully submitted,

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BY: /s/ Seth I. Robinson

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