

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

MUTUAL SECURITIES, INC.; AARON  
JASPER; MITCHELL VOSS; RYAN  
SABOL; NICHOLAS DAMIANI; JULIE  
COHEN,

Petitioners,

v.

VINCENT F. GILOTTI and MARY LOU  
GILOTTI,

Respondents.

NO. 2:21-cv-05031

**AMENDED PETITION TO VACATE  
ARBITRATION AWARD AND  
MEMORANDUM OF LAW IN  
SUPPORT THEREOF**

This Complaint is a petition pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.*, by Mutual Securities, Inc. (“MSI”), Ryan Sabol, Mitchell Voss, Nicholas Damiani, Julie Cohen, and Aaron Jasper (collectively “Petitioners”) to vacate portions of the November 23, 2021 Amended Arbitration Award<sup>1</sup> issued in FINRA Arbitration Case Number 19-00408 between Respondents Vincent and Mary Louise Gilotti and Petitioners.

**I. THE PARTIES AND JURISDICTION**

1. Petitioner Mutual Securities, Inc. is a California corporation with its principal place of business in Camarillo, California.
2. Ryan Sabol is a citizen of the State of California.
3. Julie Cohen is a citizen of the State of California.
4. Mitchell Voss is a citizen of the State of Colorado.
5. Aaron Jasper is a citizen of the State of California.
6. Nicholas Damiani is a citizen of the State of California.
7. Respondents Vincent and Mary Louise Gilotti are individuals who now reside in Utah. The Gilottis resided in Pennsylvania until 2016.

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<sup>1</sup> The Amended Award rendered moot the other two bases in Petitioners’ original petition.

8. The Gilottis are subject to personal jurisdiction in Pennsylvania because they brought an arbitration against Petitioners before the Financial Industry Regulatory Authority (“FINRA”) in Philadelphia, Pennsylvania.

9. The parties involved are citizens of different states.

10. The amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs.

11. Subject matter jurisdiction is based on 28 U.S.C. § 1332.

12. Venue is proper in this Court pursuant to 9 U.S.C. § 9 and 28 U.S.C. § 1391(b), because the Gilottis filed their arbitration against Petitioners in this district.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

13. Pursuant to the mandatory arbitration clauses in the customer agreements between the Gilottis and MSI, the Gilottis filed an arbitration with the Financial Industry Regulatory Authority (“FINRA”) in Philadelphia, Pennsylvania (“the arbitration”) to litigate their claims against Petitioners. Declaration of Jason T. Dennett (“Dennett Decl.”), ¶ 2; Exhibit 1<sup>2</sup>.

14. In response to the Gilottis’ Amended Statement of Claim, Petitioners filed an Answer requesting the arbitrators award the fees and costs that would be incurred to seek expungement from their brokerage records in the Central Registration Depository or “CRD,” a database maintained by FINRA for all registered brokerage firms and individual broker-dealers, in a separate court case. Exhibit 2 at p. 3-4.

15. Petitioners did not request the Panel make a ruling on whether any Petitioner’s CRD record should be expunged, in any pleading or at the arbitration hearing. Dennett Decl., ¶ 3.

16. The arbitration hearing was held by Zoom between February 2021 and April 2021 before a Panel of three FINRA arbitrators. Dennett Decl., ¶ 4.

17. On October 15, the Panel issued its order (the “Initial Order”). Dennett Decl., Exhibit 3.

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<sup>2</sup> Citations to “Exhibit #” refer to the exhibits attached to the Declaration of Jason T. Dennett, filed with this Amended Petition.

18. Petitioners filed their initial petition in this matter, ECF No. 1, asking for relief on three grounds:

- a. Confirmation of the monetary award on Petitioners' counterclaim against Claimants in the Initial Order;
- b. Modification of the Initial Order on the refund of \$10,750 in attorneys' fees and costs that they had already paid;
- c. Vacating the portion of the Initial Order denying expungement to Petitioners Jasper, Voss, and Sabol.

19. At the same time, Petitioners moved to modify the award with the FINRA arbitration Panel on the same grounds.

20. On November 13, 2021 (served to the parties November 18, 2021), the FINRA Panel ruled on Petitioners' motion to modify the award. Exhibit 4; Dennett Decl., ¶ 5.

21. The FINRA Panel granted the request for offset of the \$10,750 in attorneys' fees and costs that they had already paid. *Id.* This Court therefore does not have to rule on that issue.

22. The FINRA Panel denied Petitioners' motion to vacate the portion of the Initial Order denying expungement to Petitioners Jasper, Voss, and Sabol, reasoning:

[Petitioners'] request to modify the Award by removing the denial of expungement for Mitchell Voss, Aaron Jasper and Ryan Sabol as an error or mistake pursuant to FINRA Rule 12905 is DENIED. [Petitioners'] request for the costs of expungement contained an implied request to grant Expungement. None of the criteria necessary to find that expungement should be granted are applicable to these Petitioners.

Exhibit 4.

23. On November 23, 2021, the FINRA Panel issued an Amended Award ("the Amended Award") consistent with its ruling on Petitioners' motion to vacate. Exhibit 5.

24. The Amended Award explicitly denied expungements for individual Petitioners Aaron Jasper, Mitchell Voss, and Ryan Sabol, even though Petitioners had not requested that relief. Dennett Decl., ¶ 6; Exhibit 5.

### III. MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO VACATE

25. The Gilotti Panel exceeded their authority by ruling on the unsubmitted issue of expungement.

26. Section 10 of the Federal Arbitration Act permits the Court to vacate an arbitration award if there is “misbehavior” by the arbitrators, by which the rights of any party have been prejudiced, or where the arbitrators exceeded their powers. 9 U.S.C. § 10(a)(3), (4).

27. It is “fundamental that the authority of the arbitrator springs from the agreement to arbitrate.” *Swift Indus., Inc. v. Botany Indus., Inc.*, 466 F.2d 1125, 1131 (3d Cir. 1972). “In other words, an arbitrator may not venture beyond the bounds of his or her authority.” *Matteson v. Ryder Sys. Inc.*, 99 F.3d 108, 112 (3d Cir. 1996) (citation omitted).

28. “The scope of an arbitrator’s authority is limited to the issue that the parties submit for him to decide.” *Mobil Oil Corp. v. Independent Oil Workers Union*, 679 F.2d 299, 302 (3d Cir. 1982); *see also Matteson*, 99 F.3d at 114 (the parties, not the arbitrator, decide the issues submitted); *United Parcel Serv., Inc. v. International Broth. of Teamsters, Chauffeurs, Warehousemen, & Helpers of Am., Local Union No. 430*, 55 F.3d 138, 141-142 (3d Cir. 1995) (award enforceable only to the extent it does not exceed the scope of the parties’ submission).

29. When deciding a challenge to an award under Section 10(a)(4) of the Federal Arbitration Act, the Court “must examine the form of the relief awarded to determine if it is rationally derived either from the agreement between the parties or from the parties’ submissions to the arbitrators, and second, the Court must determine whether the terms of the relief are rational.” *Southco, Inc. v. Reell Precision Mfg. Corp.*, 556 F. Supp.2d 505, 511 (E.D. Pa. 2008) (internal quotation marks omitted). An arbitrator’s award must “draw its essence” from the parties’ agreement to arbitrate. *See Swift*, 466 F.2d at 1134; *see also id.*; *Ruggiero v. A.R. Baron & Co., Inc.*, No. CIV. A. 95-0297, 1996 WL 179980, at \*2 (E.D. Pa. Apr. 15, 1996) (applying doctrine in securities fraud case brought by investor against broker); *Prudential Secs. Inc. v. Shaifer*, Case No. 94-31, 1994 WL 242557, at \*2, 4 (E.D. Pa. May 27, 1994) (same).

30. The question is whether the arbitrators' interpretation of the parties' contract can "in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention." *Southco*, 556 F. Supp.2d at 511 (quoting *Exxon Shipping Co. v. Exxon Seamen's Union*, 73 F.3d 1287, 1295 (3d Cir. 1996)).

31. An arbitrator exceeds his authority if "he rules on questions or matters not before him." *Southco*, 556 F. Supp.2d at 511.

32. Similarly, under Section 11 of the Federal Arbitration Act, the Court may modify or correct an arbitration award where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted. 9 U.S.C. § 11(b).

33. The arbitration clause in the Brokerage Agreement between the Gilottis and MSI states:

All controversies that may arise between you, us, and NFS . . . shall be determined by arbitration in accordance with the rules then prevailing of the NASD, Inc., and/or any other securities self-regulatory organization or securities exchange of which the entity again whom the claim is made is a member, as you may designate.

Exhibit 1 at 5.

34. The Gilottis each signed account applications to open their accounts at issue with MSI that also contained a pre-dispute arbitration clause:

This account is governed by a pre-dispute arbitration clause, which appears on the last page of the Customer Agreement, and you acknowledge that you have received and read a copy of the Customer Agreement and the pre-dispute arbitration clause.

Exhibits 6, 7.

35. The parties signed Uniform Submission Agreements at the start of the arbitration agreeing to arbitrate the Gilottis' claims before FINRA:

The undersigned parties (parties) hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.

Exhibits 8-15 at ¶ 1.

36. Nowhere in the Answer did Petitioners request the Panel expunge any Petitioners' CRD record with FINRA.

37. The Panel reasoned that a request for expungement was "implied" by Petitioners' request for an award of the cost of expungement. Exhibit 4.

38. Yet Petitioners' Answer explicitly stated that they requested an award of the costs of a *separate* expungement proceeding in court. Exhibit 2 at p. 2-3.

39. FINRA Rule 2080 contemplates that "[m]embers or associated persons seeking to expunge information from the CRD system arising from disputes with customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief." This Rule does not require a FINRA panel to grant expungement. A court can grant that relief with no input from a FINRA panel.

40. Petitioners' Answer, in the Prayer for Relief, did not include a request for expungement from the FINRA Panel. Exhibit 2 at 35-36.

41. Petitioners did not request expungement at the arbitration hearing and did not request expungement in their post-hearing briefing. Petitioners' briefing requested only that the Panel award each individual Petitioner the fees and costs they would incur in *subsequent* individual expungement proceedings to be brought separately. *See generally* Exhibit 16 at 15:17-26; Exhibit 17 (no request).

42. The Panel's Amended Award at paragraphs 9-11 states that Aaron Jasper, Ryan Sabol, and Mitchell Voss' "request for expungement of the above-captioned arbitration" from their records "is denied." Exhibit 5 at p. 5.

43. The Panel improperly ruled on "questions or matters" not before them, and exceeded their powers, because no Petitioner requested expungement at any point.

44. Pursuant to the parties' Submission Agreements, only the present matter in controversy—as set forth in the Statement of Claim and the Answer—was submitted to FINRA for arbitration.

45. Expungement may be granted by FINRA arbitrators upon the “request” of a party “seeking” expungement. FINRA Rule 2080(b)(1).

46. Both FINRA’s expungement training and FINRA’s Arbitrator’s Guide for FINRA arbitrators similarly refer to broker “requests” for expungement throughout.<sup>3</sup>

47. FINRA further advises brokers on its website that “a party seeking expungement in an arbitration proceeding should request expungement, preferably in his or her answer, counterclaim or statement of claim.”<sup>4</sup> Only then will arbitrators decide to grant the “request,” and only after a recorded hearing specifically regarding the same. *Id.*; FINRA Rule 12805.

48. Before a Panel may determine whether a broker’s record should be expunged, a FINRA member must first have requested the Panel do so. The Panel’s Amended Award was mistaken to consider this relief because Petitioners made no such request.

49. Petitioners have been severely prejudiced by the Panel’s improper determination because there is only one chance for each individual to seek expungement from FINRA.<sup>5</sup>

50. Petitioners did not have an opportunity to argue at the hearing or in any briefing that expungement was appropriate under the standards set forth in FINRA Rule 2080.

51. Despite the parties’ agreement to submit only the matters in their pleadings to the Panel, the Panel denied expungements that were not requested, thereby manifestly disregarding the law and the parties’ contracts.

52. Paragraphs 9-11 of the Amended Award should thus be vacated.

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<sup>3</sup> FINRA Dispute Resolution, Expungement, <https://www.finra.org/sites/default/files/FINRA-Expungement-Training-May-2015.pdf> (last accessed Nov. 12, 2021).

<sup>4</sup> FINRA Dispute Resolution , Frequently Asked Questions about FINRA Rule 2080 (Expungement), <https://www.finra.org/registration-exams-ce/classic-crd/faq/finra-rule-2080-frequently-asked-questions> (last accessed Oct. 21, 2021).

<sup>5</sup> FINRA Dispute Resolution , Notice to Arbitrators and Parties on Expanded Expungement Guidance, <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance> (updated Sept. 2017).

**CONCLUSION**

53. Petitioners thus demand judgment granting this Petition and awarding the following relief:

- a. An Order vacating paragraphs 9-11 of the award denying expungements to Aaron Jasper, Mitchell Voss, and Ryan Sabol that were not requested;
- b. Any other relief the Court deems appropriate.

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