IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOMINIK WEBER,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO.
	)	
PNC INVESTMENTS LLC, a Delaware Limited Liability Company,	)	
	)	
	)	
	)	
Defendants.		

COMPLAINT IN THE FORM OF MOTION TO VACATE ARBITRATION AWARD

AND NOW comes the Plaintiff, Dominik Weber, by and through his counsel The Archinaco Firm LLC, Jason A. Archinaco, Esquire and Michael A. O'Leary, Esquire, and files the within Complaint in the Form of Motion to Vacate Arbitration Award, averring in support as follows:

The Parties

1. Dominik Weber is an Austrian Citizen who lawfully resides in the United States and the Commonwealth of Pennsylvania with a principal address of 609 Carters Grove Drive, Gibsonia PA 15044. He is a resident of the Commonwealth of Pennsylvania and is married to a U.S. and Commonwealth citizen.
2. PNC Investments, LLC, is a Delaware Limited Liability Company, with a registered agent located at 251 Little Falls Drive, Wilmington, DE 19808.
3. PNC Investments is a FINRA member firm, with a CRD# of 129052.

4. On or about March 18, 2019, a FINRA arbitration panel entered an award against Plaintiff and in favor of PNC Investments. See, FINRA Arbitration Award Service Letter dated March 18, 2019 and Award, collectively attached hereto as Exhibit "A".

5. Plaintiff moves to vacate the referenced FINRA award due to significant procedural irregularities.

Jurisdiction / Venue

6. The Federal Arbitration Act itself does not create federal jurisdiction; rather, an independent basis of jurisdiction is needed.

7. Here, federal jurisdiction is proper pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds $75,000.

8. Venue is proper in this District as the FINRA arbitration in question occurred in Pittsburgh, Pennsylvania, which is located in this district that is the subject of this Complaint in the Form of Motion to Vacate.

9. The court has pendent / supplemental jurisdiction over Plaintiff's state constitutional claims pursuant to 28 U.S.C. § 1367.

10. Jurisdiction is permitted pursuant to the Federal Arbitration Act, 9 U.S.C. § 10.

11. Proceedings to vacate or confirm an arbitration award must be served upon the adverse party of its attorney within three months after the award is filed or delivered. 9 U.S.C. § 12. Accordingly, this matter has been timely filed / served.

12. Proceedings to vacate or confirm an arbitration award are instituted by filing of a Motion to Vacate in the District Court where the arbitration was held, see 9 U.S.C. §§ 9, 12, just as a normal civil action is commenced by the filing of a complaint in the District Court, see, Fed.R.Civ.P. 3.

13. Thus, although technically called a "motion", the papers filed by a party seeking to confirm or vacate an arbitration award function as the initial pleadings in post-arbitration

proceedings in the District Court. *Bonar v. Dean Witter Reynolds, Inc.*, 835 F.2d 1378 (11th Cir. 1988).

Introduction

14. Pursuant to FINRA Rules, Plaintiff was contractually entitled to a FINRA arbitration consisting of two public arbitrators (one being the chairman) and one non-public (industry insider) arbitrator. Instead, without his consent, Plaintiff was provided with an arbitration panel that was composed 100% of non-public arbitrators due to misrepresentations and inaccurate disclosures by two of the arbitrators. Resultantly, justice demands that the arbitration award be vacate due to significant procedural irregularities, as well as a complete deprivation of Plaintiff's due process rights in violation of Pennsylvania's Constitution.

Facts
Underlying Dispute

Weber Marries; Moves to the U.S.; Is Hired by PNC; Receives Promotions

15. In 2014, Plaintiff, Dominik Weber, moved to the United States and then married to Brianna Weber, a U.S. Citizen.
16. Not long after, on or about November 3, 2014, PNC Bank hired Weber as a bank teller.
17. After his hiring, Plaintiff was provided multiple promotions, raises and positive performance reviews.
18. In February 2016, Plaintiff was placed on another promotional track, and PNC Bank sponsored him to obtain his Series 7 license and ultimately his Series 66 license. Subsequent to obtaining such licenses, Plaintiff was to be considered for additional promotions.
19. PNC Bank is not a FINRA member.

20. However, PNC Investments, LLC is a wholly owned subsidiary of PNC Bank and it is a FINRA member firm.

21. PNC Bank utilizes PNC Investments, LLC to offer and sell securities to the public.

22. Resultantly, upon passing FINRA examinations, PNC Bank would (and did) cause PNC Investments, LLC to domicile / hold and keep registered Plaintiff's securities licenses.

23. Both the Series 7 and 66 exams are overseen by FINRA.

24. On June 24, 2016, Plaintiff passed his Series 7 examination.

25. As part of the Series 7 licensing process, Plaintiff completed and signed his Form U4 to effectuate his license registrations with PNC Investments, LLC.

26. The Form U4 must be signed when an individual is employed with a FINRA member firm.

27. Signing the Form U4 is not optional if the individual seeks to utilize his securities licenses through a FINRA member firm.

28. Contained within the Form U4 is an arbitration clause.

29. There is no procedure or ability to opt out of the arbitration clause.

30. The clause provides:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the SROs indicated in Section 4 (SRO REGISTRATION) as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction.

31. Plaintiff is not in possession of his validly executed U4 as if remains in the possession of PNC Investments, however, it is not in dispute that Plaintiff executed his U4 prior to becoming a registered representative. Attached hereto is a "form" Form U4 that is, upon information and belief, identical to the one signed by Plaintiff, containing an identical arbitration clause. See, Form U4, attached as Exhibit "B".

32. Although Plaintiff was employed through PNC Bank and continued to receive his wages from PNC Bank, from June 24, 2016 forward, PNC Bank's wholly owned subsidiary, PNC Investments, LLC, held Plaintiff's Series 7 license.

33. According to PNC, despite providing Plaintiff with no additional compensation and Plaintiff not reporting to anyone at PNC Investments, Plaintiff was identified as "dually" employed with PNC Bank and PNC Investments, LLC.

34. In or about September 30, 2016, Plaintiff was scheduled to take his Series 66 exam, sponsored by PNC Bank / PNC Investments, LLC.

35. After passing that examination, Plaintiff was expecting a promotion to a financial service ("FS") position.

Plaintiff's Unlicensed Supervisor Pushes More Cross-Selling of Unsuitable PNC Securities Products; Plaintiff Refuses to Sell Unsuitable Products; Plaintiff is Terminated

36. In September 2016, approximately one week before Plaintiff was to take his Series 66 exam, his PNC Bank Supervisor, Jamie Rotellini, began questioning his "investment production . . . over the last several months." See, Arbitration Exhibit 6, attached as Exhibit "C".

37. "Investment production" refers to cross-selling of PNC securities products, as opposed to traditional bank products (mortgage, line of credit, etc.).

38. Although she possessed (and still possesses) no securities licenses, Plaintiff's PNC Bank supervisor Rotellini wrote "[T]his is not acceptable for someone we are sponsoring to get investment licenses." *Id.*

39. Indeed, although Rotellini's PNC Bank branch sold securities on its premises, the branch possessed no supervisor with a supervisory securities license.

40. Further, Plaintiff's former supervisor Rotellini is married to a high-ranking PNC executive and is provided special treatment, such as never having to appear at her branch

on a regular basis, and being able to delegate her managerial functions to non-managerial subordinates.

41. As above, Rotellini set a meeting with Plaintiff and two other supervisors to discuss his investment production. See, Arbitration Exhibit 8, attached as Exhibit "D".

42. On September 27, 2016 the meeting occurred. During the course of the meeting, Plaintiff was advised that he needed to increase his securities' investment production, and was encouraged to cross-sell inferior, underperforming PNC securities products to consumers.

43. Not inclined to cross-sell inferior, underperforming PNC securities products[1] to consumers, after the meeting Plaintiff advised in writing that he did not believe his "skill set" coincided with the FS position.

44. However, despite that, Plaintiff was not advised his job was in jeopardy, but instead was again advised by certain PNC supervisors that he would be supported and considered for promotions.

45. On September 30, 2016, Plaintiff passed his Series 66 examination.

46. Although the typical custom was to be provided the afternoon off when taking the Series 66 exam, Plaintiff still needed to hit 37 ½ hours for the week to maintain his hours for purposes of his benefits and wages. Plaintiff was 2 ½ hours short of his weekly hour requirement.

47. Resultantly, Plaintiff returned to work and worked for approximately 2 ½ additional hours until he hit his hours, and was then permitted to leave by an assistant manager, as Rotellini, as was customary, was not at the branch.

48. On Monday October 3, 2016, Plaintiff's supervisor Rotellini, had an alternate agenda, and reported Plaintiff to human resources in an effort to have him terminated. [Ex. 60].

[1] On April 6, 2018, the SEC ordered PNC to pay fines and disgorge over $6 million in connection with such products. See, In the Matter of PNC Investments, LLC, Order Instituting Administrative Cease-and-Desist Proceedings, attached hereto as Exhibit "F".

49. When reporting Plaintiff, Rotellini advised that Plaintiff "was dishonest with management so that he could leave early." See, Arbitration Exhibit 60, attached hereto as Exhibit "E". That report was completely falsified by Rotellini.

50. PNC was forced to admit that the report was inaccurate, and that Plaintiff was advised that if he had worked his hours, he could leave. See, PNC Investments FINRA Answer, ¶¶ 34-6, attached hereto as Exhibit "G".

51. Further, PNC internal records demonstrated that Plaintiff worked his necessary hours.

52. Simultaneous to the false human resource report, on Monday morning, Rotellini called Plaintiff into her office and pop quizzed him, asking him how many customers he had seen on the previous Friday after taking his exam.

53. Plaintiff wanted to check his records, but Rotellini refused – and he was forced to guess, guessing 1 or 2.

54. Thereafter, Plaintiff returned to his desk and determined it was three customers. Plaintiff returned to Rotellini and advised her of the number of customers.

55. Rotellini accused Plaintiff of lying to her despite the immateriality of the issue.

56. Rotellini also accused Plaintiff of not completing his paperwork from the previous Friday (debrief documents), despite the fact that such paperwork was routinely not completed on a daily and/or timely basis by any of the staff, including at least one employee who refused to ever complete any debrief documents.

57. Later that same day, Monday, October 3, Rotellini set a meeting with Plaintiff and Rotellini's two assistant managers.

58. As she had done with human resources earlier that morning, Rotellini made accusations directed towards Plaintiff regarding his work hours from the prior week.

59. During the meeting, the assistant managers sided with Plaintiff as he had been correctly permitted to leave the prior Friday after hitting his 37 ½ hours.

60. Additionally, over the course of the day on Monday, Plaintiff prepared his debrief documents that he had not completed on Friday before leaving, and then put them in his debrief file.

61. It was discovered during litigation of the underlying arbitration case that PNC destroyed Plaintiff's debrief file without explanation, and was unable to produce his debrief documentation.

62. Debriefs are not sales documents, and were not meant to track sales.

63. Just as important, pursuant to PNC's own policies, debriefs are to completed by managers such as Rotellini, not Plaintiff. See, Arbitration Exhibit R-54, attached hereto as Exhibit "H".

64. Later that day on Monday, October 3, at 2:37 pm, Rotellini sent an email to numerous employees congratulating Plaintiff on passing his Series 66 exam. See, Arbitration Exhibit 16, attached hereto as Exhibit "I".

65. The following day, October 4, Plaintiff worked without restriction and was given a problem customer to work with by Rotellini.

66. As of October 4, Plaintiff was unaware that Rotellini was attempting to have him terminated.

PNC Falsifies the Reasons for His Termination; PNC Files a Defamatory U5

67. On October 5, Rotellini altered her version of events, and redoubled her efforts to have Plaintiff terminated.

68. Ultimately, Rotellini was successful, first causing Plaintiff to be placed on paid leave, then causing him to be terminated on or about October 5.

69. At the time of Plaintiff's termination, internally at PNC Bank it was claimed that Plaintiff was fired for being "dishonest in response to questions he was asked by his manager. One question was related to his work schedule and the other was related to a performance issue." See, Arbitration Exhibit 19, attached hereto as Exhibit "J".

70. It was further internally documented at PNC Bank at that time that there was no accusation or claim of any falsification of records or documents. See, Arbitration Exhibit 61, attached hereto as Exhibit "K".

71. Shortly after his termination, Plaintiff spoke with a human resource manager regarding his U5.

72. FINRA rules require that a U5 be filed within thirty days after a registered person is terminated.

73. The U5 is then stored by FINRA in its database, that is made available and accessible to its member firms.

74. FINRA is comprised of over 3,600-member firms, representing monopolistic power in the securities industry, as most, if not all, *major* securities firms are members, and the vast majority of *all* securities firms are members. See, https://www.finra.org/about/firms-we-regulate

75. If negative information is provided on a U5, it serves to blackball a registered agent in the securities industry, as FINRA member firms are required to check the U5 filings of a registered agent before hiring an individual, and do not hire individuals with black stains on their U5, especially not those with "yes" box checks to any of the disclosure questions.

76. A negative mark on a registered representative's U5 greatly harms the person's reputation and defames the person.

77. FINRA procedures do not provide for any due process **prior to** the filing of a U5 by an employee's former employer.

78. Instead, a U5 is filed without any process or due process at all to the registered agent as there is no cross-examination of witnesses, review of documentation and/or the individual being fully apprised of the accusations against him.

79. Here, PNC Bank's in-house human resource manager was unaware of what a U4 or U5 even was, but advised that because Plaintiff was employed by and terminated by PNC

Bank and was not employed by PNC Investments, LLC, that nothing would be marked on his U5.

80. Thereafter, PNC assigned Plaintiff's U5 drafting to a junior member of its compliance team that had not passed his Series 66 exam until days after he drafted / filed Plaintiff's U5.

81. On or about October 19, 2016, PNC Investments, LLC filed a defamatory U5 pertaining to Plaintiff. See, Arbitration Exhibit 28, attached hereto as Exhibit "M".

82. PNC Investments checked "yes" to termination disclosure 7F1. Disclosure 7F1 provides: "Did the individual voluntarily resign from your firm, or was the individual discharged or permitted to resign from your firm, after allegations were made that accused the individual of: 1. violating investment-related statutes, regulations, rules or industry standards of conduct?" *Id.*

83. Further, PNC Investments wrote that Plaintiff had been terminated "due to violating firm policy. Specifically, Mr. Weber was terminated for being dishonest with his manager regarding his attendance and completion of sales documentation." *Id.*

84. Plaintiff was never accused by anyone of violating investment-related statutes, regulations, rules or industry standards of conduct, and as such, the yes box check was defamatory per se.

85. The reason provided for Plaintiff's termination was also falsified.

86. The U5 requires that a person sign the document and "verify the accuracy and completeness of the information contained in and with this form." *Id.*

87. Plaintiff's form was purportedly signed by an in-house attorney named Jeffrey D. Suhanic.

88. In Plaintiff's case, Suhanic did not actually sign the U5 as was required by FINRA and SEC rules and regulations, but instead violated FINRA and SEC rules by delegating his signature to a secretary and/or another attorney.

89. Irrespective of the delegation, Suhanic admitted under oath that he did not have any facts at the time the U5 was signed pursuant to his authorization and that he could not verify the information contained in the U5.

90. On October 21, 2016, Plaintiff won his unemployment compensation hearing and was provided unemployment benefits from PNC Bank. Therein, the referee noted "The Claimant's conduct was not serious enough that a dismissal was warranted without a warning." See, Arbitration Exhibit 32, attached hereto as Exhibit "N". Further, it was established that "The Claimant was not intentionally dishonest." *Id.*

91. PNC failed to submit sufficient information to the unemployment referee to support its accusation that Plaintiff was terminated for cause, and as above, Plaintiff was provided his benefits.

92. During the above time period and beyond, Plaintiff attempted to locate an alternate position in the securities industry, and was the lead candidate for a position, however, the U5 blackened his reputation and blackballed him such that subsequent employers refused to hire Plaintiff. See, Arbitration Exhibit 31, attached hereto as Exhibit "O" and Arbitration Exhibit 33, attached hereto as Exhibit "P".

93. On October 27, a potential subsequent employer advised Plaintiff that if his U5 was corrected to remove the defamatory matters, he could be hired. See, Arbitration Exhibit 34, attached hereto as Exhibit "Q".

94. That same day, October 27, FINRA inquired to PNC Investments about Plaintiff's U5 language. FINRA asked three questions:

    1. Was a customer harmed?
    2. Was it securities related?
    3. Did conduct violate any industry standards?"

    See, Arbitration Exhibit, R-53, attached hereto as Exhibit "R".

95. PNC internally documented: "**The answer is no to all 3 questions**." See, Arbitration Exhibit 35 (emphasis added), attached hereto as Exhibit "S".

96. Subsequent to that email communication with FINRA, PNC's human resource manager phoned Plaintiff.

97. During that call, PNC's human resource manager advised Plaintiff that his U5 was being revised / corrected.

98. Plaintiff generated a contemporaneous email documenting the discussion and sent it to the prospective employer: "I actually received a call from the HR woman who terminated me this afternoon to discuss my situation. She said that she received an email this morning from PNC Investments asking about the details of my termination and she said that there were changes being made to my U5." See, Arbitration Exhibit 33 (emphasis added), attached hereto as Exhibit "P".

99. On or about November 11, 2016, Plaintiff hired counsel and caused correspondence to be sent to PNC demanding that the U5 be corrected and retracted, and advising that time was of the essence to Plaintiff obtaining a position with a third-party securities' industry employer. See, Arbitration Exhibit 36, attached hereto as Exhibit "T"; Arbitration Exhibit 37, attached hereto as Exhibit "U".

100. In or about the same time period, although untrue, PNC began falsely claiming that FINRA had advised what the form U5 should contain – and that they had instructed the language that should be placed in it.

101. Ultimately, after dragging its feet, on January 4, 2017, PNC Investments revised the U5 in part, by changing the "yes" box check in 7F1 to "no", but retaining other defamatory information: "Dominik Weber's employment was terminated due to violation firm policy – not securities related. Specifically, Mr. Weber was terminated for misrepresenting facts regarding his attendance and completion of sales documentation." See, Arbitration Exhibit 38, attached hereto as Exhibit "V"; Arbitration Exhibit 40, attached hereto as Exhibit "W".

102. As above, Plaintiff never misrepresented facts about his attendance, never falsely completed any sales documentation, nor failed to complete any sales documentation.

103. Given no other choice, on or about January 13, 2017, Plaintiff filed a Statement of Claim in FINRA initiating legal action against both PNC Bank and PNC Investments, LLC. Therein, Plaintiff raised claims of defamation; intentional interference with prospective contractual relations; and equitable / injunctive relief.

PNC Manipulates and/or Conspires with FINRA

104. However, after the revised U5 was filed and PNC was sued, FINRA contacted PNC about the revision, seeking additional information due to the language that PNC had recorded on the U5, as well as the changes it made to the U5.

105. Specifically, FINRA advised that the matter might be reportable because of the (false) language that PNC had placed in the U5 about sales documents.

106. A PNC employee internally documented in an email: "The trigger seems to be the 'completion of sales documentation.' If we believe it should be no, they said we can make a case for it. . . ." See, Arbitration Exhibit 46, (emphasis added), attached hereto as Exhibit "X".

107. As above, there was no falsified sales documentation, nor any missing sales documentation as established by PNC's own internal records.

108. Thereafter, PNC's Suhanic (who blindly signed Plaintiff's U5 without knowledge of the underlying facts) claims to have had a conversation with a low level FINRA employee, one with a college level degree in graphic design.

109. According to PNC's Suhanic's own internal email, he manipulated the FINRA employee by not providing FINRA with accurate information, instead focusing on the non-existent falsified sales documentation that never existed.

110. Indeed, on January 17, 2017, PNC's Suhanic documented in relevant part: ". . .**Mr. Newman specifically pointed to falsifying or not making an accurate record.** When I reiterated that **the record in question** was not a customer record but an internal record not required to be made under FINRA or SEC rules, he responded that the notice instructs

that the question should not parsed in a manner to avoid a yes answer. . . ." (emphasis added) See, Arbitration Exhibit 48, attached hereto as Exhibit "Y".

111. Thus, PNC's Suhanic manipulated the FINRA representative by misrepresenting that there was a record that had been falsified or not accurately kept when Suhanic knew that not to be true given PNC's own internal records contradicting that position. See, e.g., Arbitration Exhibit 61, attached hereto as Exhibit "K".

112. Ultimately, PNC was forced to admit under oath that no such document existed.

113. Even worse, as stated above, it was established that PNC destroyed Plaintiff's internal debrief documentation file at an unspecified time apparently as the case was proceeding.

114. Further, while it appears apparent that Suhanic manipulated the FINRA employee, PNC maintains that FINRA conspired with PNC and insisted that the U5 be revised such that the 7F1 box was again checked "yes."

115. On or about February 9, 2017, PNC employees internally discussed the prospect of escalating Plaintiff's matter further to FINRA, as FINRA had advised. See, Arbitration Exhibit 48, attached hereto as Exhibit "Y; Arbitration Exhibit 50, attached hereto as Exhibit "Z".

116. However, knowing that there was no falsified or inaccurately kept records that formed the basis for the U5, PNC instead did not escalate the matter as doing so would reveal PNC's dishonesty.

117. Instead, on February 10, 2017, PNC Investments, LLC, revised Plaintiff's U5, re-checking box 7F1 "yes".

118. Although the U5 requires an explanation whenever it is altered, no explanation was provided for the falsified change.

119. Again, PNC's Suhanic who had no knowledge of the actual facts, caused a subordinate to sign his name verifying the accuracy and completeness of the information in violation of FINRA and SEC rules. See, Arbitration Exhibit 52, attached hereto as Exhibit "AA".

120. On or about February 24, 2017, Plaintiff filed an Amended Statement of Claim, reflecting the ongoing defamatory conduct of PNC Investments, including the revision to make Plaintiff's U5 worse. See, Amended Statement of Claim, attached hereto as Exhibit "BB".

121. As a result of the foregoing, Plaintiff was rendered unemployable in the securities industry and remains so until to this day.

122. Further, Plaintiff remained fully unemployed for six (6) months, and had his future earning capacity greatly reduced.

123. During the course of the proceeding, Plaintiff's securities licenses all lapsed due to PNC's improper actions, and at a time before Plaintiff even had an opportunity to conduct the first hearing in this case.

124. All told, damage models presented to the FINRA arbitration panel illustrated harm to Plaintiff and his reputation of between $251,213 to $1,680,148.

125. Further, Plaintiff had to be loaned approximately $34,000 by his mother to remain financially afloat due to the economic harm caused to him by PNC.

FINRA Arbitration Selection; PNC Bank Does Not Consent To Jurisdiction; Plaintiff Is Entitled to a Panel Consisting of At Least Two Public (non-industry) Arbitrators

126. Plaintiff's FINRA claims were submitted pursuant to FINRA Rules 13302 and 13402(b), i.e., a dispute between an associated person and a member.

127. Plaintiff was entitled under FINRA Rule 13402 to a three-arbitrator panel.

128. On April 12, 2017, FINRA provided the parties with a cover letter and ranking lists for the potential arbitrators. See, FINRA Cover Letter, attached hereto as Exhibit "CC".

129. On April 20, 2017, although PNC Investments, LLC remained a party to the arbitration, through the same counsel, PNC Bank advised FINRA that it had "opted not to submit to FINRA's jurisdiction in arbitration as to the claims raised by Mr. Weber. . . ."[2]

130. FINRA Rule 13403(b) – Lists Generated in Disputes Between Associated Persons or Between or Among Members and Associated Persons – governed the process of selecting the potential arbitrators.

131. FINRA Rule 13403(b)(2) provides:

> (2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:
>
> - A list of 10 arbitrators from the FINRA non-public arbitrator roster;
> - A list of 10 arbitrators from the FINRA public arbitrator roster; and
> - A list of 10 public arbitrators from the FINRA public chairperson roster.

132. With regard to FINRA's correspondence, FINRA advised "we carefully recruit and screen arbitrator candidates for admission to our roster. Our arbitrators are carefully selected from a broad cross-section of people . . . . Further, by signing the Oath, arbitrators also affirm their commitment to comply with the ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes that requires among other things that arbitrators act in a neutral, independent, and impartial manner." See, Exhibit "CC".

133. FINRA also advised in its cover correspondence:

> "Your case is proceeding according to the three arbitrator intra-industry case provisions for disputes between associated persons or between or among firms and associated persons as described in Rule 13403(b)(2). This means that the parties will receive the following three lists of arbitrators: one list with 10 chair-qualified public arbitrators, one list with 10 public arbitrators, and one list with 10 non-public arbitrators. In accordance with this rule, each separately represented party may strike up to four of the ten arbitrators on each list for any reason by crossing through the names of the arbitrators. At least six names must remain on each list."

Id.

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[2]As a result of PNC Bank "splitting" the case, on October 17, 2017, less than a year after his defamation, Plaintiff filed a writ of summons in the Allegheny County Court of Common Pleas against PNC Bank. That matter remains docketed at GD-17-014134.

134. FINRA Rule 13402(b) Disputes Between Associated Persons or Between or Among Members and Associated Persons" required that:

> "If the panel consists of three arbitrators, **one will be a non-public arbitrator and two will be public arbitrators. One of the public arbitrators will be selected from the chairperson roster** described in Rule 12400(c) of the Code of Arbitration Procedure for Customer Disputes, unless the parties agree in writing otherwise."

135. FINRA's code provides specific definitions for what qualifies as a "public" or "non-public" arbitrator.

136. FINRA Rule 13100(x) – Public Arbitrator – provides a specific definition of what constitutes a public arbitrator, with FINRA Rule 13100(x)(1)-(11) providing for various disqualifications / exclusions from serving as a public arbitrator.

137. FINRA Rule 13100(x)(1)-(4) provides for certain permanent disqualifications as a public arbitrator, including if an individual ever worked for the SEC and/or a broker-dealer.

138. Thus, certain arbitrators are disqualified as public arbitrators by virtue of their experience and background in the securities industries, and in some instances the conflict is considered so significant, that the individual is permanently disqualified as serving as a public arbitrator or public chairperson.

139. Although FINRA was required to provide lists that complied with its own rules, FINRA did not do so – instead providing lists that included non-public arbitrators that were improperly classified as public arbitrators or public chairpersons.

140. As will be documented herein, certain of the arbitrators were improperly classified as public arbitrators because they concealed information and/or misled FINRA.

141. Further, arbitrators are required to make affirmative disclosures to the FINRA director after being selected for a panel, but before they are officially empaneled. Indeed, FINRA Rule 13408 provides:

13408. Disclosures Required of Arbitrators

(a) Before appointing arbitrators to a panel, the Director will notify the arbitrators of the nature of the dispute and the identity of the parties. Each 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, 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 or 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; and

(4) Any existing or past service as a mediator for any of the parties in the case for which the arbitrator has been selected.

(b) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) 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.

(c) The Director will inform the parties to the arbitration of any information disclosed to the Director under this rule unless the arbitrator who disclosed the information declines appointment or voluntarily withdraws from the panel as soon as the arbitrator learns of any interest, relationship or circumstance that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

(emphasis added)

142. After confidential submission of the arbitrator selection / strike lists, on May 5, 2017, Plaintiff was advised in correspondence from FINRA that "FINRA has appointed the panel and scheduled the Initial Prehearing Conference . . . ." See, Exhibit "DD", May 5, 2017 Correspondence from FINRA.

Plaintiff is Provided Arbitrator Oaths and Disclosures; The Two "Public" Arbitrators Improperly Fail to Make Disclosures; Procedural Irregularities Occur

143. Thereafter, Plaintiff was provided with Arbitrator Oaths and Disclosures for each of the three empaneled arbitrators. See, Oath And Disclosure Reports, attached as Exhibits "EE" (Schwaba), "FF", (Ryan), "GG" (Matthews).

144. Each arbitrator was required to sign an Oath and Disclosure statement. *Id.*

145. The Oath contains a provision that states: "I have carefully read, reviewed, and considered FINRA Office of Dispute Resolution's Temporary and Permanent Arbitrator Disqualification Criteria. I affirm that, based on the criteria, I am not temporarily or permanently disqualified from being a FINRA arbitrator." *Id.*

146. Further, the Oath required that any additional disclosures be identified in connection with the Oath / Disclosures that had not already been disclosed. *Id.*

147. Each disclosure question on the form has three choices: "yes", "no" and "already on disclosure report."

148. On the form, each arbitrator was required to provide specific answers under **Section IV - Arbitration Classification Disclosures**, responding to eight different questions and sub-parts.

149. According to the FINRA Oath and Disclosure document, the Arbitration Classification Disclosures are designed to "allow FINRA to correctly classify you based on these factors." E.g., Exhibit "GG", p. 6.

The Non-Public Arbitrator Properly Completes His Oath and Disclosures

150. Arbitrator Schwaba was empaneled by FINRA as the sole non-public arbitrator and, according to FINRA rules, was to be the sole non-public arbitrator on the panel. See, FINRA Rules 13402(b); 13403(b)(2).

151. In response to the "Arbitrator Classification Disclosures", Arbitrator Schwaba **disclosed** his affiliation with a broker dealer, as well as additional previously disclosed affiliations that caused him to be classified as a non-public arbitrator. Exhibit "EE".

152. Upon information and belief, Arbitrator Schwaba correctly disclosed his potential conflicts as a non-public arbitrator.

The Public Chairman Falsely Completes His Oath and Disclosures

153. Arbitrator Matthews was empaneled by FINRA as the public chairman.

154. According to FINRA rules, he was to be a public arbitrator, not an industry insider / non-public arbitrator. See, FINRA Rules 13402(b); 13403(b)(2).

155. Arbitrator Matthews, who is also an attorney, made no further disclosures on his Oath and Disclosure form, while affirming that he had reviewed and completed the questionnaire correctly. Exhibit "GG".

156. In connection with "**Section IV - Arbitrator Classification Disclosures**", Arbitrator Matthews checked "no" to every single question asked. *Id.*

157. In particular, Arbitrator Matthews answered "no" to the following disclosure questions:

> 1. Are you, or were you **ever**, associated with, including employed by, or registered through, under, or with (as applicable):
>
> a. a broker dealer or (including a government securities broker or dealer or a municipal securities dealer or dealer)?
>
> ---
>
> c. An entity that is organized under or registered pursuant to the Securities Exchange Act of 1934, Investment Company Act of 1940, or the Investment Advisors Act of 1940?
>
> 2. Professional Time Devoted to Entities / Persons Engaged in the Securities Industry
>
> a. Are you an attorney . . . who has, within the past five years, devoted 20 percent or more of your professional time, in any single calendar year, to any entities listed in question (1) above and/or any persons or entities associated with any of the entities listed in question (1) above?

158. Arbitrator Matthews did not complete the form accurately and truthfully and failed to make proper disclosures.

159. Instead, Arbitrator Matthews answers to Section IV Disclosure questions 1(a) and (c) were inaccurate / untrue, as Arbitrator Matthews both worked for a broker dealer (Wachovia) for ten years, (1(a)), and also worked at the SEC (1(c)). See, Arbitrator Matthews Attorney Website Biography, attached hereto as Exhibit "HH".

160. Arbitrator Matthews also did not disclose that he was counsel in the case of *Argosy Capital Group v. Triangle Capital Corporation*, 1:17-cv-09845-ER that was actively being litigated from 2017 through at least 2018 while Plaintiff's case was proceeding. See, New York and Kentucky Federal Dockets, attached hereto collectively as Exhibit "II".

161. Resultantly, upon information and belief, Arbitrator Matthews may also have falsely answered disclosure question 2(a) above regarding his professional time, in addition to the other two permanent disclosure questions that he unequivocally did not respond to truthfully.

162. Irrespective of his current securities related income, under FINRA Rule 13100 (x), Arbitrator Matthews was permanently disqualified from being a public arbitrator or public chairperson for at least two separate reasons: both his work for a broker dealer, FINRA Rule 13100(x)(1)(A), and also because he worked at the SEC, FINRA Rule 13100(x)(1)(C).

163. Had Arbitrator Matthews properly completed his Oath and Disclosure and properly disclosed his prior work experience on the form, he would have been disqualified and/or not permitted to serve as either a public chairperson, or a public arbitrator under FINRA rules.

164. However, by falsely completing the form, he was not only not disqualified, but instead caused himself to improperly be empaneled in Plaintiff's case.

The Public Arbitrator Also Falsely Completes His Oath and Disclosures

165. In addition to infirmities in Arbitrator Matthews Oath and Disclosures, are infirmities with the other purported "public" arbitrator, Arbitrator Ryan.

166. Arbitrator Ryan also signed his Oath and Disclosure statement. Exhibit "FF".

167. The disclosures that Arbitrator Ryan made at the time to FINRA, did not cause FINRA or FINRA's Director to classify him as a non-public arbitrator, but instead his disclosures caused him to remain classified as a public arbitrator. *Id.*

168. While Arbitrator Ryan disclosed certain general connections to PNC Bank, he advised he was not involved with PNC Investments, and that he did not "think any of these facts would influence my decision in the present case." Exhibit "FF".

169. Although Arbitrator Ryan disclosed that his company "uses PNC", and his son was employed at PNC Bank, Arbitrator Ryan did not make any disclosure that caused FINRA to re-classify him at that time as a non-public arbitrator.

170. As would be learned only after the case was decided, Arbitrator Ryan was actually an industry insider / non-public arbitrator, yet he and FINRA did not properly and timely reveal those facts.

171. Instead, although he was truly a non-public arbitrator, Arbitrator Ryan was falsely categorized as a public arbitrator though out the entire arbitration, a fact that was not disclosed until after the evidence had been fully submitted, after any time period for objecting to his classification and shortly before the award was entered. See, Exhibit "A"; See, Arbitration Reclassification Letter dated February 13, 2019, Exhibit "JJ".

172. Thus, while FINRA rules required Plaintiff be provided with an arbitration panel consisting of one non-public and two public arbitrators, Plaintiff was, in actuality, provided with a panel that consisted **100% of industry insiders / non-public arbitrators** in complete contravention of FINRA's rules, and in complete deprivation of Plaintiff's Pennsylvania Constitutional Due Process rights.

The Non-Public Arbitrator Disappears; FINRA Appoints a New Non-Public Arbitrator

173. After the arbitrators were empaneled, the case proceeded into discovery.

174. During the course of discovery, PNC Investments failed to properly produce documents.

175. As a result, Plaintiff filed a motion to compel that was heard by Chairman Matthews.

176. Although the motion was granted on November 11, 2017, Chairman Matthews assessed 50% of the motion costs against Plaintiff, with the other 50% against PNC Investments. See, Order, attached hereto as Exhibit "KK".

177. The arbitration hearing in the case was set to begin July 30-August 3, 2018 in Pittsburgh.

178. However, upon Plaintiff appearing for the hearing, Arbitrator Schwaba failed to appear without any explanation from him or FINRA.

179. Because PNC Investments refused to consent to proceeding with only two arbitrators, a continuation fee of $1400 was assessed against PNC Investment at that time. See, FINRA Correspondence dated August 2, 2018, attached hereto as Exhibit "LL".

180. After the unexplained disappearance of Arbitrator Schwaba, on August 13, 2018, FINRA advised that a new non-public arbitrator had been selected. See, Correspondence dated August 13, 2018, appointing Arbitrator Marcoline, attached hereto as Exhibit "MM".

181. On or about September 12, 2018, Arbitrator Marcoline provided his Oath and Disclosures. Exhibit, "NN".

182. Therein, Arbitrator Marcoline disclosed that he was a non-public arbitrator. *Id.* As above Arbitrator Marcoline was supposed to be the sole non-public arbitrator. See, FINRA Rules 13402(b); 13403(b)(2).

183. Further, in the process of making disclosures, Arbitrator Marcoline advised of a potential conflict, as his daughter was dating (and likely to marry) an executive with Hawthorn PNC Wealth, a wholly owned subsidiary of PNC Financial Services Group, Inc, a related entity to PNC Bank. See, Oath and Disclosure / Additional Disclosures, collectively attached hereto as Exhibit "OO". However, Arbitrator Marcoline advised that he did not believe that it was a conflict and FINRA did not strike him. *Id.*

184. From January 28-31, 2019, the arbitration hearing occurred in Pittsburgh, Pennsylvania before what was believed to be a properly constituted panel, but instead was actually an improper constituted 100% industry panel. See, Exhibit "A".

185. During the course of the hearing, as above, Plaintiff alleged that his U5 was defamatory for the reasons set forth above.

186. Indeed, while Plaintiff was permitted to testify about the request to cross-sell the inferior funds, Chairman Matthews refused to admit a key piece of evidence, i.e., the publicly available SEC cease-and-desist order that directly corroborated and supported Plaintiff's viewpoint that PNC Investments was acting improperly in cross-selling inferior mutual funds. See, Hearing Excerpt, pp. 991-2, attached hereto as Exhibit "PP".

187. On January 31, 2019, the evidence, hearing and record in the matter closed and was submitted to the panel for a decision. See, Exhibit "A".

188. Just two weeks **after** the record was closed, on or about February 13, 2019, FINRA sent a letter to Plaintiff's counsel advising **for the first time**:

> "Please be advised that William Francis Ryan's classification has changed from Public to Non-Public. William Francis Ryan remains on the panel. The reclassification will apply to the arbitrator's future case appointments, and does not affect the arbitrator's classification in this case.

See, Exhibit "JJ".

189. To this day, FINRA has never revealed what additional information they obtained and/or were provided to cause the re-classification.

190. However, it is self-apparent that Arbitrator Ryan was actually a non-public arbitrator during Plaintiff's arbitration, something that was not timely disclosed, and was completely improper under FINRA's rules.

191. FINRA's disclosure about Arbitrator Ryan was grossly untimely, as the record had already been closed and submitted to the Panel for determination.

192. On or about March 18, 2019, the improper, **100% constituted industry insider / non-public panel** rendered an award in favor of PNC Investments, and against Plaintiff.

193. Further, although Arbitrator Matthews had previously assessed 50% of the previously mentioned, successful discovery motion against PNC Investments, See, Exhibit KK, without explanation, the panel re-assessed those fees against Plaintiff. See, Exhibit "A."

194. The panel also reversed its prior order assessing fees against PNC Investments for the delay in the proceeding, and instead waived PNC's portion. *Id.*

195. And, further to the point, the panel not only denied all of Plaintiff's relief, but also assessed the entirety of the forum fees against Plaintiff in the amount of $12,600. *Id.*

Law
Motion To Vacate
Pursuant to 9 U.S.C. §§ 9-12, 10(a)(2), (3) and/or (4)
and the Pennsylvania Constitution, Articles I, § 1 and 11.

196. Plaintiff hereby incorporates by reference his Brief, filed simultaneous hereto, as if more fully set forth at length herein.

The Arbitration Award Must Be Vacated Pursuant to 9 U.S.C. §§ 10(a)(2), (3) and/or (4)

197. Section 10 of the Federal Arbitration Act provides four instances in which the district court may set aside an arbitration award. An arbitration award may be vacated because of (1) corruption, fraud and undue means; (2) partiality or corruption of the arbiter; (3) misconduct prejudicial to the rights of any party, such as refusal of an arbiter to postpone a hearing or refusal of an arbiter to hear evidence; and (4) where the arbiters exceed their powers or failed to make a final and definite award. See, 9 U.S.C. § 10(a).

198. "Arbitration is a matter of contract," *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648 106 S.Ct. 1415, 1418 (1986), and therefore, the parties may determine by contract the method under such arbitrators for their disputes will be appointed. *Cargill Rice, Inc. v. Empresa Nicaraguense Dealimentos Basicos*, 25 F.3d 223, 226 (4th Cir. 1994). See also, *MacDonald v. CashCall, Inc.*, 883 F.3d 220, 232 (3d Cir. 2018)(citing *Cargill Rice* favorably).

199. The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, expressly states in section 5 that if the parties have provided in their contract "a method of naming or appointing an arbitrator or arbitrators ..., such method shall be followed." 9 U.S.C. § 5.

200. "Arbitration awards made by arbitrators not appointed under the method provided in the parties' contract must be vacated." *Cargill Rice, Inc. v. Empresa Nicaraguense Dealimentos Basicos*, 25 F.3d 223, 226 (4th Cir. 1994).

201. Courts generally vacate such awards pursuant to 9 U.S.C. § 10(a)(4) because the arbitrators under such scenarios are deemed to "exceed their powers." *Cargill Rice, Inc.*, 25 F.3d at 226[3]; *Encylopedia Universalis S.A. v. Encyclopaedia Britannica, Inc.*, 403 F.3d 85, 92 (2d Cir. 2005); *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830, 831 (11th Cir. 1991); See also, *Tamari v. Conrad*, 552 F.2d 778, 781 (7th Cir. 1977); *Food Handlers Local 425 v. Pluss Poultry, Inc.*, 260 F.2d 835 (8th Cir. 1958); *Bear Stearns & Co. v. N.H. Karol & Assocs., Ltd.*, 728 F.Supp. 499, 501 (N.D.Ill.1989) ("[A]rbitrator[s] who [are] improperly elected ha[ve] no power to resolve a dispute between the parties...."); *Local 227, Int'l Hod Carriers v. Sullivan*, 221 F.Supp. 696 (E.D.Ill.1963).

202. Courts have also vacated pursuant to 9 U.S.C. § 10(a)(2) or (3) when a FINRA arbitrator failed to properly disclose his conflicts. *Move, Inc. v. Citigroup Global Markets, Inc.*, 2016 WL 6543522 (9th Cir. Nov. 4, 2016); *Citigroup Glob. Markets, Inc. v. Berghorst*, 11-80250-CIV, 2012 WL 5989628, at *3 (S.D. Fla. Jan. 20, 2012); *Millman v. UBS Financial Services Inc.*, (Cal. App. Dec 19, 2018) attached hereto as Exhibit "QQ".

203. Here, the 100% non-public / industry insider panel, in contravention of FINRA's rules, requires that the arbitration be vacated pursuant to 9 U.S.C. § 10(a)(2), (3) and/or (4).

The Arbitration Award Must Be Vacated as Violating the Pennsylvania Constitution, Articles I, §§ 1 and 11

[3] In *MacDonald*, 883 F.3d at 232, the 3rd Circuit cited *Cargill Rice* favorably for this exact proposition.

204. The Commonwealth of Pennsylvania's Constitution does protect reputation as a fundamental right of mankind. Article I, §§ 1 and 11

205. Article I, § 1 of the current Pennsylvania Constitution provides:

> **§ 1. Inherent rights of mankind.**
>
> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. Art. I, § 1 (emphasis added).

206. Resultantly, laws and/or statutory schemes that impinge upon such a right must meet strict scrutiny review, or they are unconstitutional. *See In the Interest of J.B.*, 107 A.3d 1 (Pa. 2014)(striking down Pennsylvania's law requiring mandatory lifetime registration for juvenile sex offenders as violating fundamental right of reputation).

207. Prior to the filing of his U5, Plaintiff was not provided with any due process at all: no opportunity to be heard; no opportunity to confront and cross-examine any witnesses or testimony used to support the published statements; no opportunity to subpoena documents; and no opportunity to subpoena witnesses on behalf of the terminated individual.

208. Plaintiff was entitled to due process prior to the filing of his U5. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Cmwlth. 1995).

209. Only providing due process and/or a remedy after the publication of defamatory material is "an unconscionable abrogation of a state protected constitutional right without procedural due process." *Id.*

210. FINRA's U5 'statutory' scheme is state action for purposes of a constitutional analysis.

211. In Pennsylvania, FINRA's U5 framework is Constitutionally impermissible and violates basic notions of due process, particularly with regard to Question 7F and its sub-parts.

212. FINRA's framework permits the publication of defamatory material, published to all FINRA members, without any due process.

213. By utilizing and engaging the U5 framework as a member firm / owner of FINRA, PNC acted under color of law. *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725, 81 S.Ct. 856 (1961); *Lugar v. Edmonson Oil*, 457 U.S. 922, 941, 102 S.Ct. 2744 (1982).

214. Further, by providing an arbitration panel composed 100% of industry insiders / non-public arbitrators in violation of FINRA rules, Plaintiff's fundamental right to his reputation was violated.

215. Accordingly, the arbitration award must also be vacated as it was unconstitutional proceeding in violation of Plaintiff's fundamental rights.

Conclusion

216. For the reasons set forth herein, in the supporting materials and in Plaintiff's accompanying Brief in Support of Complaint in the Form of Motion to Vacate, Plaintiff demands that the arbitration award be vacated.

Dated: June 14, 2019

Respectfully Submitted

THE ARCHINACO FIRM LLC

By: */s/ Jason A. Archinaco*
Jason A. Archinaco
Michael A. O'Leary
Attorneys for Plaintiff, Dominik Weber

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOMINIK WEBER,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO.
	)	
PNC INVESTMENTS LLC, a Delaware Limited Liability Company,	)	**NOTICE OF COMPLAINT IN THE FORM OF MOTION TO VACATE ARBITRATION AWARD**
	)	
Defendants.	)	

TO: PNC Investments
c/o Danielle M. Kays, Esq.
Seyfarth Shaw LLP
233 S. Wacker Drive, Suite 8000
Chicago, IL 60606-6448
dkays@seyfarth.com

PNC Investments
c/o Frederic L. Lieberman, Esq.
Seyfarth Shaw LLP
620 Eighth Avenue
New York, NY 10018
flieberman@seyfarth.com

PURSUANT TO 9 U.S.C. § 12, PLEASE TAKE NOTICE that on June 14, 2019, Plaintiff, Dominik Weber, by and through his counsel, The Archinaco Firm LLC, Jason A. Archinaco and Michael A. O'Leary, filed an errata, renaming its Motion to Vacate to: Complaint in the Form of Motion to Vacate Arbitration Award, in the United States District Court for the Western District of Pennsylvania and applied for an Order vacating the arbitration award entered at FINRA Arbitration Number 17-00158 on March 18, 2019, pursuant to 9 U.S.C. §10.

PLEASE FURTHER TAKE NOTICE that in support of this Motion, Plaintiff shall rely on the accompanying Brief in Support and accompanying Exhibits.

PLEASE FURTHER TAKE NOTICE that oral argument has been requested.

Respectfully submitted,

THE ARCHINACO FIRM LLC

By: */s/ Jason A. Archinaco*
Jason A. Archinaco
Michael A. O'Leary
Counsel for Plaintiff,
Dominik Weber

CERTIFICATE OF SERVICE

I, Jason A. Archinaco, hereby certify that I have served a true and correct copy of the foregoing **NOTICE OF COMPLAINT IN THE FORM OF MOTION TO VACATE ARBITRATION AWARD** to and upon the following, via email, facsimile and United States First Class Mail, on this 14th day of June, 2019:

Frederic L. Lieberman, Esquire
Seyfarth Shaw LLP
620 Eighth Avenue
New York, NY 10018
flieberman@seyfarth.com

Danielle M. Kays, Esquire
Seyfarth Shaw LLP
233 S. Wacker Drive, Suite 8000
Chicago, IL 60606-6448
dkays@seyfarth.com

THE ARCHINACO FIRM, LLC

/s/ Jason A. Archinaco
Jason A. Archinaco