

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

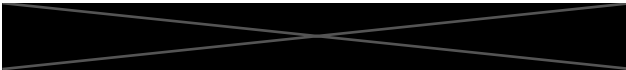
**DISPUTE RESOLUTION**

*In the Matter of the Arbitration Between*



Claimant,

v.



Respondent.

FINRA Case No.



**BRIEF IN SUPPORT OF CLAIMANT'S FIFTH AMENDED MOTION  
FOR RECONSIDERATION OF DECISION TO PROVIDE THE  
CUSTOMER WITH AUDIO RECORDING OF FINAL HEARING**

**Introduction**

This legal brief concerns the issue of whether it is permissible to disclose confidential audio recordings of an arbitration proceeding to a non-party participant without the consent or authorization of the parties or without a forum rule authorizing its disclosure. The brief discusses Florida legal precedent and federal legal precedent. This brief will argue that such disclosure is prohibited under Florida law and federal law.

**Florida Legal Precedent**

Florida law requires that arbitration proceedings be kept confidential absent a waiver or court order. Florida Statute §682.02 provides that "[a]n arbitration proceeding, and an award shall be confidential unless the parties to the arbitration agree otherwise in writing or in any other manner provided in the agreement to arbitrate or if disclosure is required of a governmental body or the interest of justice requires disclosure." The Florida Supreme Court has also held that "confidentiality is the cornerstone of the arbitration process" and that "a party's right to a

confidential arbitration proceeding may only be waived by express written agreement of the parties." *Kyocera Corp. v. Prudential-Bache Trade Services, Inc.*, 341 So. 2d 237, 238 (Fla. 1976). *Federated Dep't Stores, Inc. v. Adams*, 542 So. 2d 1221, 1223 (Fla. 1989) further reinforces this principle, holding that "arbitration proceedings and records are presumptively confidential absent an agreement or authorization to the contrary."

In addition, the Florida Rules of Civil Procedure provide that discovery may be obtained only from parties or non-parties pursuant to a subpoena, which must be served in compliance with the rules. See Fla. R. Civ. P. 1.280. The rules do not authorize the disclosure of confidential arbitration records absent a subpoena, and the subpoena process provides certain protections for the parties subject to discovery.

### **Federal Legal Precedent**

The Federal Arbitration Act (FAA) governs arbitration proceedings in federal court and provides that "the proceedings ... shall be deemed a private matter, not subject to disclosure or publication." 9 U.S.C. §9. The United States Supreme Court has also held that "the policy favoring arbitration ... requires that the parties' agreement to arbitrate be rigorously enforced, and that the courts enforce the agreement according to its terms." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989). This policy includes the confidentiality of arbitration proceedings absent a waiver or court order.

Furthermore, the Federal Rules of Civil Procedure provide that discovery may be obtained only from parties or non-parties pursuant to a subpoena. See Fed. R. Civ. P. 45. The rules do not authorize the disclosure of confidential arbitration records absent a subpoena, and the subpoena process provides certain protections for the parties subject to discovery.

### **Conclusion**

FINRA Rule 13606(a)(1) is the only forum rule pertaining to disclosing recordings of the arbitration proceeding. The rule only authorizes production to the parties. Thus, there are no forum rules that authorize production of the recording to the non-party participant customer.

Based on Florida legal precedent and federal legal precedent, it is clear that the disclosure of confidential audio recordings of an arbitration proceeding to a non-party participant without the consent or authorization of the parties or without a forum rule authorizing its disclosure is prohibited. The Florida Statute and Florida Supreme Court precedent emphasize the importance of confidentiality in arbitration proceedings, and the Federal Arbitration Act and United States Supreme Court precedent reinforce that policy. The rules of civil procedure also provide protections for parties subject to discovery, which do not authorize the disclosure of confidential arbitration records absent a subpoena. Therefore, it is imperative that parties, arbitrators, and arbitration forum adhere to these legal precedents to maintain the integrity of the arbitration process.

Very truly yours,

/s/ James P Galvin  
James P. Galvin, Esq.  
Galvin Legal, PLLC