

CASE NO: 18-15716

IN THE SUPREME COURT OF THE UNITED STATE

SYED NAZIM ALI,

PETITIONER,

v.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
(FINRA), RESPONDENT.**

ON WRIT OF CERTIORARI

TO THE UNITED STATE COURT OF APPEALS

FOR NINE CIRCUIT

BRIEF FOR THE PETITIONER

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Questions Presented

- 1. Whether FINRA Arbitration process violated the Petitioner's rights of due process of law by failing to be fair and using the arbitration immunity to shield their actions.
- 2. Whether the Petitioner who is the sole owner Global which is a small corporation should be allowed to represent the Corporation since all of the resources invested were from the Petitioner.

PARTIES TO THE PROCEEDINGS

The Petitioner Syed Nazim Ali.

The Defendants are Financial Industry Regulatory Authority Inc.

Table of Contents

INTRODUCTION.....	6
JURISDICTION	6
STATUTORY PROVISION INVOLVED	6
STATEMENT	6
REASONS FOR GRANTING WRIT	8
I. WHETHER FINRA ARBITRATION PROCESS VIOLATED THE PETITIONER'S RIGHTS OF DUE PROCESS OF LAW BY FAILING TO BE FAIR AND USED THE ARBITRATION IMMUNITY TO SHIELD THEIR ACTION	8
II. WHETHER THE PETITIONER WHO IS THE SOLE OWNER OF GLOBAL WHICH IS A SMALL CORPORAITON SHOULD BE ALLOWED TO REPRESENT THE CORPORATION SINCE ALL OF THE RESOURCES INVESTED WERE FROM THE PETITIONER	15
CONCLUSION.....	18
CERTIFICATE OF SERVICE.....	19
CERTIFICATE OF COMPLIANCE.....	20

TABLE OF AUTHORITIES

Cases

Alario v. Miller, 354 So. 2d 925, 926 (Fla.App.1978)	16
Buck Retail Stores v. Harkert, 157 Neb. 867, 898-99, 62 N.W.2d 288, 307 (1954)	16
Bushmann v. Professional Men's Assoc., 405 F.2d 659 (7th Cir.1969),.....	17
Diversified Credit Corp. v. Kimmel, 508 F. Supp. 140, 144 (N.D.Ill.1981);	16
Eden v. Miller, 37 F.2d 8 (2d Cir.1930)	16
Empire Life Insurance Co. of America v. Valdak Corp., 468 F.2d 330, 335 (5th Cir.1972);	16
Ernst, Inc. v. Manhattan Construction Co.....	11
Ernst, Inc. v. Manhattan Construction Co., 551 F.2d 1026, 1034	11
Grimes v. Bramer, 214 Iowa 405, 407, 239 N.W. 550, 550 (1931);	15
Local 508 v. Standard Register Co., 103 L.R.R.M. (BNA) 2212 (S.D. Ohio 1979).....	11
Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-163 (1803).....	14
N.M. State Inv. Council v. Ernst & Young LLP, 641 F.3d 1089, 1094 (9th Cir. 2011).8	
Royal Alliance Associates, Inc. vs. Liebhaber No. B264619 (Cal. App., 2Dist., 8/30/16).....	9
S.A. v. Cory, 522 F. Supp. 254 (S.D.Ia.1981).....	16
Sherman v. British Leyland Motors, Inc., 601 F.2d 429, 440 n. 13 (9th Cir.1979)	16
State v. Bechtel, 244 Iowa 785, 810-11, 56 N.W.2d 173, 187 (1953);	15
Trans World Airlines, Inc. v. Sinicropi, No. 93 CIV. 3094 (CSH), 1994 WL 132233 (S.D.N.Y. Apr. 14, 1994).....	11
U.S. Life Ins. Co. v. Superior Nat. Ins. Co., 591 F.3d 1167, 1177 (9th Cir. 2010).....	9
United States v. Park Place Assocs., 563 F.3d 907, 918 (9th Cir. 2009).....	8
Weiss v. Northwest Acceptance Corp., 274 Or. 343, 348, 546 P.2d 1065, 1069 (1976);	16
World Airlines, Inc. v. Sinicropi, No. 93 CIV. 3094 (CSH),	11
Zokoych v. Spalding, 36 Ill.App.3d 654, 663, 344 N.E.2d 805, 813 (1976).....	16

Other Authorities

CAL. Civ. PROC. CODE § 1280.1 (West Supp. 1988)	12
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Rules

Annot.167 A.L.R. 279 (1947)	16
Code of Civil Procedure section 1286.2.....	10
Federal Rule of Civil Procedure 12(b)(6)	8

Regulations

28 U.S.C. § 1291	6
Under § 10(a)(3)	8

INTRODUCTION

Syed Nazim Ali, Individual, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeal for the Ninth Circuit Supported by Appendix A, B, C, D, E and F.

JURISDICTION

The judgment of the district court was entered on October 30, 2017 (See Appendix B). A notice of appeal was filed on November 2, 2017, and the case was docketed in the 9th Cir Court of appeals on that date November 3, 2017 and 9th Cir Ct decision was entered on October 29, 2018 (See Appexix A).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1291 provides in relevant part: “The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States .

STATEMENT

Syed Nazim Ali (hereinafter “Petitioner” or “Ali”) is the owner and sole shareholder of Global E-Business Services Inc., (hereinafter “ Petitioner” or “Global”) Global operates as a Nevada-based securities and asset holding corporation. Previously, Global has a security investment account with Ameritrade. Ali had transferred his own personal resources to Global as a way for the company to get started. An infomercial of Interactive Broker(

hereinafter “IB”). was seen by Ali with promises of a great return on any investments. Ali contacted IB and was given the assurance that if he transfers his investment from Ameritrade to them, it would be safe. The transfer of Global was made with the reasonable belief that the investment would be secure.

The end results were Global loss over three million dollars. In an attempt to recoup his loss, Ali filed an arbitration claim with Financial Industry Regulatory Authority (hereinafter “FINRA”) against Interactive Brokers LLC in July 2014 as an effort to reach a nonjudicial settlement. (Dist. Ct. Dkt. No. 36 at 3). The whole process of FINRA subjected the Petitioner to an unreasonable, bias and unfair arbitration process. FINRA violated the Petitioner’s rights of the Fifth and Fourteenth Amendment of due process by failing to provide a fair and reasonable hearing.

In this dispute between broker and customer, FINRA issued an award on November 13, 2015, denying all of Global eBusiness’s claims against Interactive Brokers in their entirety.

The Petitioner filed a complaint against the Respondent Global eBusiness had asserted claims against FINRA for professional negligence, breach of fiduciary duty, intentional infliction of emotional distress, unfair business practices in violation of California Business and Professional Code §§ 17200, violation of FINRA rules 2020, violation of NASD Conduct Rule 2111.

The court ruled in favor of the Respondent. The Petitioner file an appeal. The Appeal Court held that the district court properly dismissed the Petitioner’ claims on the basis of arbitral immunity because the claims alleged “effectively seek[] to challenge the decisional act of an arbitrator or an

arbitration panel.”

The court also held that they would not consider Ali’s contentions on behalf of Global eBusiness Services, Inc. because Ali, who is appearing pro se, may not represent a corporation. The Ninth Circuit affirmed the district court opinion. This Petition for Writ of Certiorari is made in order to reverse the decision of the Ninth Circuit Court.

REASONS FOR GRANTING WRIT

I. WHETHER FINRA ARBITRATION PROCESS VIOLATED THE PETITIONER’S RIGHTS OF DUE PROCESS OF LAW BY FAILING TO BE FAIR AND USED THE ARBITRATION IMMUNITY TO SHIELD THEIR ACTION

FINRA violated the Petitioner’s rights of due process of law by failing to be fair and used the arbitration immunity to shield their action. In accordance with the standard of review, this court should reverse the judgment of the Ninth Circuit. Generally, the court will review *de novo* a district court’s denial of a motion to vacate an arbitration award. See, e.g., *United States v. Park Place Assocs.*, 563 F.3d 907, 918 (9th Cir. 2009). Also, the court will review *de novo* a district court’s dismissal of a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). See, e.g., *N.M. State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089, 1094 (9th Cir. 2011). The Ninth Circuit should have vacated the award because it violated the Petitioner’s constitutional rights. Under § 10(a)(3) of the FAA, courts may

vacate an arbitration award upon finding that “the arbitrators were guilty of . . . any . . . misbehavior by which the rights of any party have been prejudiced.” In determining whether an arbitrator’s misbehavior or misconduct prejudiced the rights of the parties, we ask whether the parties received a fundamentally fair hearing. See, e.g., U.S. Life Ins. Co. v. Superior Nat. Ins. Co., 591 F.3d 1167, 1177 (9th Cir. 2010). In the present case, FINRA failed to adhere to the rules of arbitration process in reference to the Petitioner and IB. The FINRA ‘s administrative process denied the Petitioner the right to discovery to produce witnesses which would have substantiate his position.

A case for this court to consider is Royal Alliance Associates, Inc. vs. Liebhaber No. B264619 (Cal. App., 2Dist., 8/30/16). In Royal Alliance, the Appellant Royal Alliance Associates, Inc., a securities brokerage firm, petitioned to confirm an arbitration award recommending expungement of an allegation of misconduct from the record of one of its employees, Kathleen J. Tarr. The individual who made the allegation of misconduct, Sandra Liebhaber, petitioned to vacate the same arbitration award. Liebhaber argued that the arbitrators violated the rules applicable to the arbitration and refused to hear evidence she sought to introduce and cross examination she sought to elicit. The Financial Industry Regulatory Authority, Inc. (FINRA), under whose auspices and rules the arbitration at issue was

performed, also petitioned to vacate the award on similar grounds. Id. The court in Royal Alliance stated that the arbitrators denied Liebhaber a full and fair opportunity to introduce and challenge evidence material to the expungement proceedings to which she was a party. The arbitrators' refusal to hear Liebhaber's evidence and cross-examination deprived Liebhaber of a fair hearing and substantially prejudiced her rights within the meaning of Code of Civil Procedure section 1286.2. Id. Accordingly, the Petitioner was denied a fair hearing and was substantially prejudiced by Respondent's action. Clearly, FINRA did not provide a fair hearing to the Petitioner. The pertinent question for us is not what the FINRA rules provided or whether the arbitrators adhered to them; it is whether the trial court correctly concluded that the arbitrators prevented a party from fairly presenting its case and prejudiced her rights as a result. This same analogy can be applied in this case. The FINRA panel prevented the Petitioner from having a fair hearing and prejudiced his right. Some examples of how the Petitioner rights were violated is that he was denied the right by FINRA to have the digital electronic files of IB which provided ample evidence of the character and integrity of IB's broker policy. If this evidence would have been allowed, the outcome of hearing would have been totally different. Instead, the Petitioner was denied his rights which were prejudicial in that he lost over three million dollars because of their unfair and bias

administrative process of FINRA.

FINRA is attempting to hide behind the veil of arbitrary immunity when they have violated the Petitioner's due process rights. Courts have also allowed two other exceptions to absolute arbitral immunity. As a matter of law, arbitral immunity does not act to bar claims for equitable relief. See Trans World Airlines, Inc. v. Sinicropi, No. 93 CIV. 3094 (CSH), 1994 WL 132233 (S.D.N.Y. Apr. 14, 1994). In the case at bar, the Petitioner is seeking equitable relief and immunity does not apply to FINRA. FINRA cannot hide behind the shield of arbitral immunity.

A case that shows whereby the arbitrary failed to allow for a fair administrative hearing is I. C. Ernst, Inc. v. Manhattan Construction Co., the architect acting as a "quasi-arbitrator" failed to evaluate and submit plans and specifications.(I. C. Ernst, Inc. v. Manhattan Construction Co., 551 F.2d 1026, 1034, reh'g granted in part, 559 F.2d 268 (5th Cir. 1977). The court held that the architect's inaction was not "functionally judge-like" to warrant immunity. Graphic Arts Int'l Union, Local 508 v. Standard Register Co., 103 L.R.R.M. (BNA) 2212 (S.D. Ohio 1979) In the present case, FINRA activities were not functioning "judge-like" to warrant immunity. The Defendant's Arbitration Panel members and Presiding Chairperson, Mr. David Anderson, exceeded their power and abused their powers to disregarded clearly defined laws and legal practices or legal principle applicable to this case, and denied

the Plaintiff two Motions to Compel request to obtain discoverable and relevant information from IB during discovery and to present identified eight accountable officers from IB into the hearing . (See Appendix E) This was just one of many crucial facts that impacted the outcome of the case which were a clear violation of the Petitioner's rights.

The Ninth Circuit failed to follow the California State Law. (See CAL. Civ. PROC. CODE § 1280.1 (West Supp. 1988). In the Cal. Civ. Proc. Code § 1280.1, there are limitation for arbitral immunity which are :

1. Arbitrators are liable for negligence or breach of contract if they totally fail to perform their obligations;
2. 3. Arbitrators who violate a person's constitutional or civil rights, an unlikely event, might be subject to injunctive or declaratory relief.

In the present case, FINRA is liable to the Petitioner as stated in the first cause of action for Professional Negligence in the First Amended Petition. (Appendix F – Plaintiff's First Amended Complaint). FINRA is totally liable for their breach of fiduciary duty which is the second cause of action in the Plaintiff's First Amended Complaint. The Ninth Circuit should have made note of this fact but they failed to do so. This case should be reversed because the Ninth Circuit failed to follow the California Rule of Civil Procedure § 1280.1

Secondly, FINRA violated the Petitioner's Constitutional Rights to Due

Process of law in terms of the Fifth and Fourteenth Amendments to the United States Constitution. Due process has been the founding principles of this country that protects one from the arbitrary denial of life, liberty, or property by the government. Procedural due process protects citizens from the coercive power of government by ensuring that adjudication processes, under valid laws, are fair and impartial. When the government seeks to deprive a person of one of those interests, procedural due process requires at least for the government to afford the person notice, an opportunity to be heard, and a decision made by a neutral decisionmaker. In the case at bar, the Petitioner was not allowed a right to have a neutral decision maker. Instead, FINRA showed their bias and unreasonable administrative process of IB to allow them take advantage of the Petitioner and Global's resources. It is imperative that the court should reversed the Ninth Circuit judgment on this case.

In "Becoming a Fifth Branch," 99 Cornell L. Rev. 1 (2013), Professors William A. Birdthistle & M. Todd Henderson write:

" Academic commentators and courts have already noted that the phenomenon of increasing governmentalization of SROs is creating constitutional problems in the regulatory state. As SROs increasingly wield the power of the federal government, so too must they be restrained by constitutional checks on their authority. That is, if members of SROs may be

deprived of liberty by an organization that is acting under the color of governmental power, then they must also be protected by the constitutional mechanisms that ensure liberty in our political system. imposing a disciplinary sanction, broadly defined, on a member or person affiliated with a member . . . [they] must be required to conform their activities to fundamental standards of due process.”); US Chamber of Commerce, US Capital Markets Competitiveness: The Unfinished Agenda , 7-8 (2011) (“As government delegates regulatory authority, explicitly or implicitly” to FINRA . . . “it should also impose Administrative Procedure Act (APA) or similar due process . . . requirements” on the SRO.); Richard L. Stone and Michael A. Perino, “Not Just a Private Club: Self-Regulatory Organizations As State Actors When Enforcing Federal Law,” 1995 Columbia Business Law Rev. 453, 493

it is not only illogical, but at least arguably offensive to fundamental notions of fairness, to grant FINRA a comprehensive set of immunities no matter the harm it inflicts. It is not just Global or Ali that has been harmed by FINRA’s action. Ali is a single father and his children will be directly impacted by this financial blow. Now, Ali and Global both are financially ruined. Undoubtedly, the notion that for every legal wrong there should be a remedy is more of an aspiration than a reality. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162-163 (1803) (“It is a settled and invariable principle, that

every right, when withheld, must have a remedy, and every injury its proper redress.”). Nevertheless, it is not an aspiration that should be so readily abandoned. The reality is that the Ninth Circuit made an error because the Petitioner’s Constitutional Rights were violated, and the case should be reversed.

II. WHETHER THE PETITIONER WHO IS THE SOLE OWNER OF GLOBAL WHICH IS A SMALL CORPORATION SHOULD BE ALLOWED TO REPRESENT THE CORPORATION SINCE ALL OF THE RESOURCES INVESTED WERE FROM THE PETITIONER

The Ninth Circuit committed a grievous error by not allowing the Petitioner who is the sole owner of Global which is a small corporation should be allowed to represent the Corporation since all of the resources invested were from the Petitioner. The Petitioner has put all of his life’s savings into the new company called Global. The Petitioner represented himself in this case because he had a direct interest in the outcome of the case. The Ninth Circuit failed to consider this fact that this is a small one-man corporation. To apply the previous laws of only attorney representing corporation is very unreasonable given the facts and circumstance of this case.

Ali is the sole shareholder of Global. Not only is Ali the sole shareholder, but he is also the Director of Global. As a shareholder, Ali has certain rights. The general rule for corporate law, shareholders have no claim for injuries to their corporations by third parties unless within the context of a derivative action. *State v. Bechtel*, 244 Iowa 785, 810-11, 56 N.W.2d 173, 187 (1953); *Grimes v. Bramer*, 214 Iowa 405, 407, 239 N.W. 550, 550 (1931); 13 Fletcher *Cyclopedia of Corporations* § 5910 (1980).

There is, however, a well-recognized exception to the general rule: a shareholder has an individual cause of action if the harm to the corporation also damaged the shareholder in his capacity as an individual rather than as a shareholder. See Annot. 167 A.L.R. 279 (1947). Courts vary in their articulation of the test for showing direct injury to the individual. Some describe the direct injury as a special duty owed to the shareholder. See *Sherman v. British Leyland Motors, Inc.*, 601 F.2d 429, 440 n. 13 (9th Cir. 1979); *Empire Life Insurance Co. of America v. Valdak Corp.*, 468 F.2d 330, 335 (5th Cir. 1972); *Weiss v. Northwest Acceptance Corp.*, 274 Or. 343, 348, 546 P.2d 1065, 1069 (1976); *Zokoych v. Spalding*, 36 Ill.App.3d 654, 663, 344 N.E.2d 805, 813 (1976). In other cases, the direct injury is said to be an injury to the individual separate and distinct from that suffered by the other shareholders. See *ITT Diversified Credit Corp. v. Kimmel*, 508 F. Supp. 140, 144 (N.D.Ill. 1981); *E.K. Buck Retail Stores v. Harkert*, 157 Neb. 867, 898-99, 62 N.W.2d 288, 307 (1954); *Alario v. Miller*, 354 So. 2d 925, 926 (Fla.App. 1978).

Obviously, the Ninth Circuit made a fundamental error by denying the Petitioner the right to represent the corporation when in fact he is the only party of the corporation. The Petitioner has a vested interest in Global. The vested interest is his investments that has been loss due to the unreasonable and unfair administrative process of FINRA.

Previous courts have distinguished a few cases in which a special duty to the shareholder was found. In *Eden v. Miller*, 37 F.2d 8 (2d Cir. 1930), plaintiffs formed a corporation for freight hauling in consideration for defendant's promise to provide the corporation with capital and to secure business for it. Defendant breached the oral contract and plaintiffs could recover in their individual capacity. A special duty arising out of a contract was also present in *Sedco International, S.A. v. Cory*, 522 F. Supp. 254 (S.D.Ia. 1981). The

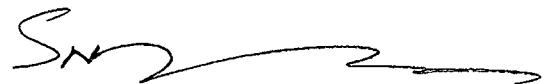
court recognized that the estate of the shareholder, Roy Carver, had an individual cause of action "when the wrong is both to the stockholder as an individual and to the corporation." *Id.* at 314. In that case the wrong to the individual, Carver, was plaintiff's alleged fraudulent inducement of Carver to make substantial loans of operating capital to the corporation of which Carver was a stockholder and with which plaintiff was doing business. The last example the court should consider is *Bushmann v. Professional Men's Assoc.*, 405 F.2d 659 (7th Cir.1969), in which the stockholder, who was also a guarantor, was allowed to sue in his individual capacity because of a contract between plaintiff, defendant and a lending bank. The contract contained an implied promise by the defendant that defendant would not mismanage the corporation for which the stockholder was guarantor to the bank which was a party to the contract.

In the case at bar, the Petitioner should be allowed to recover as well since he is the sole shareholder of the corporation. It is vitally important that the Ninth Circuit judgment should be reversed. The Court in their Memorandum stated " We do not consider Ali's contentions on behalf of Global eBusiness Services , Inc. because Ali, who is appearing pro se, may not represent a corporation. " Ali who is the sole owner of the corporation is pro se and he is representing all of his interest that he has poured into the corporation which has a direct impact on him. A one-person corporation should be not be subject to prior rulings that are for big corporation where there are several shareholders. The court should tackle this issue and set a precedent that shareholder and sole owners of small corporations have just as much of a right to bring a cause of action pro se in order to defend their claims. The Ninth Circuit is apparently out of touch with how new corporation are operating. The decision of the Ninth Circuit should be reversed. Therefore, the writ of certiorari should be granted.

CONCLUSION

WHEREFORE, for the above and foregoing reasons, Petitioner respectfully requests that this Court grant this Petition and issue a writ of certiorari to review the decision of the Ninth Circuit Court of Appeals in this case.

Respectfully submitted on January 12, 2019.



Syed Nazim Ali, Pro Se
PETITIONER