

No. 20-275

In The

SUPREME COURT OF THE UNITED STATES

Barrington C. Boyd Pro Se — PETITIONER

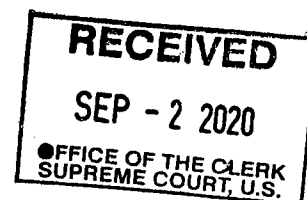
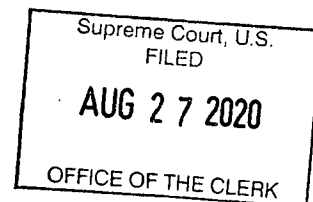
VS.

Teachers Insurance And Annuity Association of America; TIAA-CREF
Individual & Institutional Services LLC — RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO The United States Court of Appeals For The
Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIOWN(S) PRESENTED

Is it a matter of national interest and importance that large financial services employers should not be able to skate around discrimination laws, EEOC regulations and federal discrimination laws while unnecessarily and viciously destroying US workers lives when issues of discrimination are raised?

The questions posed are: (1) Whether TIAA one of the US largest retirement plan provider, a fortune 100 corporation with over 17,000 employees illegally weaponized FINRA (Financial Industry Regulatory Authority) FORM U5 (to effect violation of Title VII of the Civil Rights Acts of 1967) - as a blacklisting tool against former discriminated against employee- a reporting repository for registered financial services employees? FINRA FORM U5 contains accumulated former employer(s) remarks – corrections, modifications, employment history, regulatory actions, investment related licensing information, arbitration, and complaints? (2) Given that TIAA is a expert employer in completing FINRA Form U5 – did TIAA intend to file negative remarks in breach of the contract they drafted?

Something needs to be done to stop the discriminatory injustice by huge financial services firms use of FINRA as a blacklisting tool to deny US workers employment opportunity in a field that the workers spent years to be qualified to work in.

It is time for the court to act now and set a precedent about the mistreatment of employees by these huge trillion-dollar firms. And implement a process for expungement of illegal and discrimination remarks in FINRA repository open to employees.

LIST OF PARTIES

The following was a plaintiff and is petitioner here: Barrington C. Boyd Pro Se.

Teachers Insurance And Annuity Association of America; TIAA-CREF Individual & Institutional Services LLC defendants and the respondents here.

RELATED CASES

Mylan Labs Inc vs. Matkari, 7F.3d 1130,1134(4th Cir. 1993).

Ashcroft vs. Iqbal, 556 U.S. 662,679 (2009).

E. Shore Mkts., Inc v. J.D. Assocs. LLP, 213 F.3d 175, 180 (4th Cir. 2000).

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

Am. Chiropractic Ass'n v. Trigon Healthcare Inc, 367 F. 3d 212, 234 (4th Cir. 2004).

Phillips v. LCI Int'l Inc, 190 F 3d 609, 618 (4th Cir. 1999).

Supplee v. Miller-Motte Bus. Coll. Inc, 768 S.E.2d 582, 590(N.C. Ct. App. 2015).

Branch V. High Rock Lake Realty Inc, 565 S.E.2d 248, 252(NC Ct. App. 2002).

Wake Med v. Surgical Care Affiliates, LLC 778 S.E.2d 308,312 (N.C. Ct. App. 2015).

Credit Union v. Butler & Burke, LLP 764 S.E. 2d 642,651 (N.C. Ct. App. 2014).

Long v. Long, 588 S.E.2d 691, 302 (N.C. Ct. App. 2003).

Charlotte Motor Speedway, In v. Tindall Corp., 672 S.E.2d 691, 302(N.C. Ct. App. 2009).

Templeton v. First Tenn. Bank, N.A., 424 F. App'x 249, 250 (4th Cir. 2011)

U.S. EEOC v Lockheed Martin Corp., 444 F. Supp. 2d 414, 417 (D. Md. 2006).

U.S. EEOC, 444 F. Supp. 2d at 417.

Price v. Thompson, 380 F.3d 209, 212 (4th Cir. 2004).

Burlington N. & Santa Fe Ry Co v. White, 548 U.S. 53, 68(2006).

Rochon v. Conzaes, 438 F.3d 1211, 1219 (D.C. Cir 2006).

Robinson v. Shell Oil Co, 519 U.S. 337,346 (1997).

Harris v. Ann's House of Nuts, No. 4:14cv185, 2015 WL 390, 2017, at *4(E.D.N.C. June 24, 2015).

Alberts v. Wheeling Jesuit Univ., No. 5:09-cv-109 2011 WL 2132983, at *4(N.D. W. Va. May 25, 2011).

White, 548 U.S. at 68.

Foster v. Univ. of Maryland-Eastern Shore, 787 F3d 243, 251(4th Cir. 2015).

Templeton, 424 F.App'x 251.

Price, 380 F.3d at 213

Poor v. Hill, 138 (NC App. 19, 2000)

Hillmon Doctrine.

U.S. v Jenkins 579 F.2d 840, 843(4th Circuit, 1978).

Jacobs v. N.C. Admin. Office of the Courts, 780 F.3d 562 n.l(4th Cir. 2015).

Defenders of Wildlife v. N.C. Dep't of Transp., 762 F.3d 374, 392(4th Cir. 2014).

Wells Fargo Ins. Servs. USA Inc. v. Link, 827 S.Ed 458, 472(N.C. 2019).

Hodgin v. Brighton, 674 S.E.2d 444, 446(N.C. Ct App. 2009).

Helms v. Schultze, 588 S.E.2d 524, 527 (N.C. Ct App. 2003).

Myers v. Myers, 714 S.E.2d 194, 198(N.C. Ct. App. 2011)

Transcript of Oral Argument, Hearing in US District Court Western District NC 3:17-cv-0024,
March 27th, 2019.

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APPENDIX B – Order from The United States District Court For The Western District Of North Carolina Charlotte Division 3:17-CV-00224-GCM – with transcript of hearing attached.

APPENDIX C - Order from The United States District Court For The Western District Of North Carolina Charlotte Division 3:17-CV-00224-GCM. Order dated September 20th, 2017.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States Court of Appeals For The Fourth Circuit appears at Appendix A to the petition and is unpublished

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or, ☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished – transcript of motion hearing attached;

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or, ☒ is unpublished.

☒ The opinion of the United States district court appears at Appendix C to the petition and attached;

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is _____

☐ reported _____ at _____; or,

☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

The opinion _____ of the _____ court
appears at _____ to the petition and is _____ Appendix

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

1.
JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was:

May 29, 2020.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ~~, and a copy of the order denying rehearing appears at~~ Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. _____
— A —.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including (date) on _____ (date) in Application No. — A —.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A claim for retaliation in violation of Title VII of the Civil Right Act of 1964 and breach of contract.

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STATEMENT OF THE CASE

Barrington Boyd an African-American male is a licensed investment advisor with series 7 and 66 qualifications. Barrington began working for TIAA around June 2005 and work for nearly a decade as a great Client Relationship Consultant and Wealth Management Advisor.

On March 15, 2005 TIAA issued petitioner a letter terminating his employment. On or about March 24, 2015 TIAA submitted to the Financial Industry Regulatory Authority (FINRA) a Uniform Termination Notice for Securities Industry Registration (Form U5). In the space provided for Termination Explanation, respondent stated:

Did not meet internal performance expectations for position. No violation of industry rules, no customer harm, not securities related.

Petitioner filed two charges of discrimination with the EEOC asserting that defendant had discriminated against him on the basis of race (2014 and 2015)

On or about June 16th, 2015 petitioner and TIAA participated in a mediation with EEOC and entered into a mediation agreement resolving petitioner's 2014 and 2015 EEOC charges.

On or about June 25th, 2015 petitioner executed a second agreement with TIAA (drafted by TIAA) entitled Separation Agreement and Release in Full (Separation Agreement):

Paragraph 3 of the Separation Agreement provided, in full:

TIAA will file with the appropriate depository within the Financial Industry Regulatory Authority ("FINRA") the amended explanation of "discharged: disagreement regarding internal policy requirements for position. No violation of industry rules, no customer harm, not securities related" on your "Uniform Termination Notice for Securities Industry Registration" or "U-5 To be clear, you agree not to challenge in any way the accuracy and/or proprietary [sic] of the U-5 explanation above that TIAA will file with FINRA and to release TIAA pursuant to Paragraphs 11 and 12 below, from any claim related to the filing or content of that U-5 amendment.

Additionally, Paragraph 4 of the Separation Agreement provided that TIAA would not provide a letter of recommendation or personal reference for Plaintiff, instead providing him with contact information for TIAA's employment verification system. Paragraph 4 further provided that, in response to any inquiry about his separation from TIAA, Plaintiff was to "respond only that 'you have left TIAA on amicable terms to pursue new opportunities,' without further elaboration."

Paragraph 11 of the Separation Agreement, which outlined the claims released by Plaintiff, expressly stated, "This release of claims does not extend to your contractual right to enforce the terms of this Agreement or to any claims that may not be lawfully released."

On or about July 22, 2015, TIAA submitted a revised U-5 to FINRA with regard to Plaintiff's termination. In the space provided for "Termination Explanation," Defendant stated:

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"DISAGREEMENT REGARDING INTERNAL POLICY REQUIREMENTS FOR POSITION. NO VIOLATION OF INDUSTRY RULES, NO CUSTOMER HARM, NOT SECURITIES RELATED."

Immediately below the Termination Explanation, in the space provided for an explanation for amendment, Defendant stated:

THE FAILURE TO MEET INTERNAL POLICY EXPECTATIONS
PRECIPITATED A CONVERSATION WITH THE EMPLOYEE AS
TO WHAT THOSE EXPECTATIONS WERE AND SHOULD BE.
ULTIMATELY, IT WAS THE INABILITY TO REACH AN
UNDERSTANDING AS TO WHAT THE JOB EXPECTATIONS
WERE THAT RESULTED IN THE SEPARATION.

TIAA's explanation for the amendment was neither accurate nor consistent with the language in Paragraph 3 of the Separation Agreement.

Through counsel, Plaintiff objected to TIAA's explanation, which violated the terms of the Separation Agreement.

TIAA initially refused to remedy its breach, but finally submitted another revised U-5 to FINRA on or about December 7, 2015. The revised U-5 retained the agreed-upon language as the "Termination Explanation," but changed the explanation for the amendment to state: "Amended to accurately reflect the intent of the previous amendment."

Following his termination, Plaintiff has applied for numerous positions in the securities industry.

Several of Plaintiff's prospective employers, noting the amended language in the various U-5 forms submitted to FINRA by TIAA, demanded that Plaintiff provide them with the contact information of his former supervisor, rather than TIAA's employment verification service.

Upon information and belief, several prospective employers contacted Plaintiff's former supervisor for further information regarding Plaintiff's employment history with TIAA.

Upon information and belief, Plaintiff's former supervisor provided negative feedback to these prospective employers regarding Plaintiff's performance.

Plaintiff was informed by several prospective employers that he did was not hired because of negative referrals provided by his former supervisor at TIAA.

On or about December 27, 2016, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), asserting a claim for retaliation in violation of Title VII of the Civil Rights Act of 1964.

On or about January 23, 2017 the EEOC issued Plaintiff a Right to Sue Letter, which Plaintiff received on or about February 6, 2017. Plaintiff timely files his Complaint within 90 days after receiving the Right to Sue Letter.

On or about June 26, 2015, the parties entered into the Separation Agreement, a valid and enforceable contract.

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Paragraph 3 of the Separation Agreement provided, in full:

TIAA will file with the appropriate depository within the Financial Industry Regulatory Authority ("FINRA") the amended explanation of "discharged: disagreement regarding internal policy requirements for position. No violation of industry rules, no customer harm, not securities related" on your "Uniform Termination Notice for Securities Industry Registration" or "U-5." To be clear, you agree not to challenge in any way the accuracy and/or proprietary [sic] of the U-5 explanation above that TIAA will file with FINRA and to release TIAA pursuant to

Paragraphs 11 and 12 below, from any claim related to the filing or content of that U-5 amendment.

Additionally, Paragraph 4 of the Separation Agreement provided that TIAA would not provide a letter of recommendation or personal reference for Plaintiff, instead providing him with contact information for TIAA's employment verification system. Paragraph 4 further provided that, in response to any inquiry about his separation from TIAA, Plaintiff was to "respond only that 'you have left TIAA on amicable terms to pursue new opportunities,' without further elaboration."

TIAA has breached Paragraphs 3 and 4 of the Separation Agreement by filing a U-5 amendment that was both false and inconsistent with the language agreed to in Paragraph 3 of the Separation Agreement and providing negative references to Plaintiff's prospective employers.

As a direct and proximate result of TIAA's breach, Plaintiff has suffered economic damages, including but not limited to the loss of prospective jobs.

SECOND CAUSE OF ACTION (Retaliation in violation of Title VII of the Civil Rights Act of 1964 — Both Defendants)

Plaintiff restates and realleges the foregoing paragraphs as if fully set forth herein.

Plaintiff engaged in a protected activity by filing EEOC Charges against Defendant in 2014 and 2015, alleging discrimination on the basis of his race.

Following the resolution of the 2014 and 2015 EEOC Charges through the Separation Agreement, TIAA took adverse employment actions against Plaintiff by interfering with his job search, including by falsely amending his U-5 and by providing negative referrals to prospective employers.

Defendants' retaliatory actions were motivated by Plaintiff's engagement in activities protected by Title VII of the Civil Rights Act of 1964.

Upon information and belief, TIAA acted with malice and/or with reckless indifference to Plaintiff's federally protected rights.

As a direct and proximate result of Defendants' violations of Title VII of the Civil Rights Act of 1964, Plaintiff has been damaged.

REASONS FOR GRANTING THE PETITION

Given the confusion and that The US District court was conflicted in its opinion when it recognized that a plausible contract breach and retaliation was in effect under its order dated September 20, 2017.

The US District court during the court hearing of March 27, 2019 erred in stating that TIAA did not breach the contract and that Plaintiff had gotten what was bargained for. TIAA initially refused to do what was bargained for under their contract. Petitioner request this court to clarify said.

The US 4th Circuit court doubled down on the error. The cases cited by the 4th Circuit does not address the case at hand and there is no evidence that FINRA required TIAA to add an explanation. TIAA had already negotiated what language to add in the FINRA Form U5 under the terms of their contract negotiations with plaintiff and EEOC. The court is giving TIAA contract options not bargained for in the contract TIAA drafted and refused to honor. TIAA did not use a none-egregious statement or remark – TIAA chose to use the very language they negotiated to change!

Both the US District court and the US 4th Circuit erred in not considering the preponderance of evidence submitted by Plaintiff on the issue of the retaliation and contract breach and is giving to TIAA options not bargained for under the contract.

The lower courts erred in over looking nor addressing that TIAA is an expert employer in completing FINRA Form U5 – which does not require an explanation for termination. So; it is clear that TIAA intended from the get go to use the FINRA Form U5 as a weapon against the plaintiff with its many amendments used to block the Plaintiff from gaining employment. Why did TIAA lie in its remarks on the Form U5?

For years TIAA has been damaging US employees with its vicious vindictive use of the FINRA Form U5 and has used is to sabotage the US work force and economy. TIAA says it serves the greater good – so why could they not do the right thing here? Why should the lower courts allow TIAA be to not honor the terms of their contract?

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Now more than ever the US work force is under attack by trillion-dollar firms with no accountability. The court needs to send a message and grant the writ holding TIAA accountable.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Barrington Boyd

Date: August 27, 2020 _____

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Barrington Boyd — PETITIONER (Your Name)

VS.

Teachers Insurance And Annuity Association of America; TIAA-CREF Individual &
Institutional Services LLC — RESPONDENT(S)