

No. 21-1507

In the
Supreme Court of the United States

HOUSTON BYRD, JR.,

Petitioner,

v.

BRAD D. FARNSWORTH AND
CHRISTOPHER COOK,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

Petitioner Byrd attempted to resolve the matter. Thereby, not needlessly encumber the court and saving himself monies. The Respondents have knowingly and willfully violated Federal Rules of Civil Procedure 11 and the professional codes of ethic 1.) protect and pursue client's legitimate interests; 2.) within the bounds of law and 3.) while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system by knowingly and willfully committing Perjury, 18 U.S.C. § 1621.

Upon review by SCOTUS, they will notice the filings by the Respondents and the U.S. District Court for the Southern District of Ohio Eastern Division (district court) and U.S. Court of Appeals for Sixth Circuit's (Sixth Circuit) Entries/Orders, etc., all will be disappointed and troubled. Therefore, the Respondents July 1, 2022, Brief for Opposition (Brief) must be DENIED due to perjury and it being a sham 1.) SCOTUS clearly has an exhibit denoting a Traditional IRA. As of the filing of their Brief in Opposition (Brief), the Respondents are still perjuriously alleging an Annuity. 2.). the Brief alleges the district court granted a DISMISSAL of the compliant, Document Number 28. However, the Respondents knowingly and willfully committed deception and perjury by alleging, in their Motion to Dismiss filed May 13, 2021, page 1, "Second, as an employee of FINRA, Cook is entitled to absolute regulatory immunity." This statement contradicts, the Respondents' Disclosure of Corporate Affiliations and Financial Interest, filed July 23, 2021, in the circuit court where they now state FINRA is a

private not-for-profit corporation. 3.) the district and circuit court were made aware FINRA was not immune nor affiliated with the SEC and should have known such. The District and Sixth Circuit's prejudicial stances were a detriment to the Petitioner and both courts conspiratorially facilitated the fraud and perjury.

As triers of fact and law, our legal system is predicated on independent and a fair judicial system where judges impartially apply the applicable laws. Conclusory and perjurious arguments are not evidence and established-legislated laws cannot be arbitrarily be rewritten by a court or attorney. The Respondents Brief in Opposition similar to the district court and Sixth Circuit's Entries failed to affirm 1.) whether, the bilateral contract was for a Traditional IRA; 2.) there was a unilateral breach of the bilateral contract; 3.) what is diversity jurisdiction; 4.) what is a substantial federal question and 5.) the Civil Cover, App.43a documents the defendants as Farnsworth and Cook? The district and Circuit courts have facilitated fraud and misrepresentation of a material fact by continually filing pleadings by the Respondents and Entries/Orders etc. ONLY alleging Cook!

Ohio follows the "no set of facts" pleading standard, recognizing that a complaint "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975), quoting *Ashcroft v. Iqbal*, 355 U.S. 41, 45, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

The Brief in Opposition Must be DENIED.

SCOTUS must accept the Writ 1.) the case is relevant; 2.) the issue is not moot; 3.) the parties have a standing in the outcome and 4.) the issues of diversity jurisdiction and substantial federal questions are a confusion to the district and circuit courts.

Our legal system is based on the fundamental principle that courts are an independent branch of government in which fair and competent judges interpret and apply the laws. The district judge violated our constitution rights by 1.) vilifying myself; 2.) introducing extraneous and irrelevant arguments instead of the Removal and Traditional IRA and 3.) cowing the Sixth Circuit chief judge not to accept a legal and valid appeal. The abusive, misconduct and prejudicial actions are Prejudicial and Reversible.

The district court filed an Opinion and Order (O&O) on June 30, 2021, affirmed by the Circuit court's November 8, 2021, Order. The O&O incorrectly, alleged petitioner had an Annuity; similar to the entirety of the Entries and Orders by both the district court and the Sixth Circuit. The contract was not for an Annuity a fee driven and depleting of funds product.

A complaint was filed in the State court on April 7, 2021, after a fraudulent breach and actual breach of contract by a financial advisor on April 28, 2017, within the statute of limitations for both a fraudulent breach and actual breach of contract. The Respondents REMOVED the complaint to the district court on May 6, 2021. A fraudulent breach is both a civil and criminal act and a party with intent to deceive is another action a.) no intention to perform; b.) false misrepresentation and c.) reckless disregard. An actual breach is an actual refusal to perform pursuant to a contract.

On, May 6, 2021, the matter was Removed to a federal court pursuant to 28 U.S.C. § 1331, 1441; 1446". 28 U.S.C. § 1331, *i.e.*, bankruptcy, patent law, copyright, maritime, cases with sufficient federal questions and no plaintiff and defendant are citizens of the same state, etc.; 1441 and 1446. 28 U.S. Code § 1332—Diversity of citizenship; amount in controversy; costs (d)(3)(F)(4). A district court shall decline to exercise jurisdiction under paragraph (2)-(9); including a fiduciary breach.

- 1) A violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private federal cause of action for the violation, does not state a claim “arising under the Constitution, laws, or treaties of the United States” within the meaning of 28 U.S.C. § 1331, refer to Holmes and Grable tests, etc.
- 2) Failure to submit a Disclosure of Corporate Affiliations and Financial Interest to the district court.
- 3) The Brief in Opposition alleges, “The district court granted a DISMISSAL of the compliant, Document Number 28. However, the Respondents knowingly and willfully committed perjury by alleging, in their Motion to Dismiss filed May 13, 2021, page 1, “Second, as an employee of FINRA, Cook is entitled to absolute regulatory immunity.” This statement contradicts, the Respondents’ Disclosure of Corporate Affiliations and Financial Interest, filed July 23, 2021, in the circuit court where now they, state, “FINRA is a private not-for-profit corporation.” (EMPHASIS)

- 4) Contrary, the Disclosure of Corporate Affiliations and Financial Interest, Document 11, filed 07/23/2021, alleging now Cook is a non for profit and not a public officer, App 41a? There was a recant to the perjurious Motion to Dismiss filed May 13, 2021. The Disclosure to the Sixth Circuit Court clearly states, “FINRA is a private not-for-profit corporation.”
- 5) First, even if pg. 10, para. 2 of the Brief in Opposition is accurate, the breach and fraud occurred on April 2017, App.50a. Second, App.45a and App.48a definitively states a Traditional IRA. Yet, perjuriously, in violation of Civ. R. 11, the Respondents’ Brief in Opposition still deceptively and perjuriously alleges an Annuity, page 11, para. 2!
 - a. At the time of filing the complaint, in Ohio, the statute of limitations to file a lawsuit for breach of a written contract is 8 years and 6 years for breach of an oral contract. The statute of limitations begins to run on the date the cause of action accrues, which is usually the date of the breach of the contract. *See*, Ohio Revised Code sections 2305.06 and 2305.07.
 - b. At this time, the statute of limitations for fraud in Ohio demands that a general act of fraud should be filed within ten years since the act is discovered. However, because fraud is such a varied topic in the realm of crime, the statute of limitations can vary according to the type of fraud that is committed. In Ohio

and many other states, fraud is known as a white-collar crime and a serious offense.

- c. R.C. 2305.09(D)'s four-year statute of limitations governs negligent misrepresentation claims. "To establish actionable negligence, one must show * * * the existence of a duty, a breach of that duty and injury resulting proximately therefrom." *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318, 544 N.E.2d 265, 270.
- 6) Finally, once again, the Petitioner was not deemed a vexatious litigant, the assertions by the Respondents are deceptive and perjurious:

An Order filed on November 8, 2021, NOT RE-COMMENDED FOR PUBLICATIONS, page 3 by the U.S. Court of Appeals for Sixth Circuit did not side with the district court's abusive and unwarranted Opinion and Order.

Rather, than stating, the Respondent has a Constitutional Right to file a complaint.

Sherar v. Cullen, 481 F. 2d 946 (1973) "There can be no sanction or penalty imposed upon one because of his exercise of constitutional rights." *Simmons v. United States*, 390 U.S. 377 (1968); *Spevack v. Klein*, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967). "The claim and exercise of a Constitution right cannot be converted into a crime" . . . "a denial of them would be a denial of due process of law".

The Sixth Circuit wrote:

The Order bullet (5) emphatically stated, in part, "... [a]n the motion to declare Byrd a

vexatious litigant were not “pleadings” within the definition of Federal Rule of Civil Procedure . . . and therefore not proper subjects of a motion to strike” by [sic] Byrd’s motion.

In conclusion, the Respondents’ actions have been knowingly and willfully deceptive and perjurious:

18 U.S. Code § 1621—Federal perjury—is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both for each instance.

The Penalty of Perjury pursuant to 18 U.S. Code § 1621—Perjury generally (2) and Federal Rules Civil Procedure R. 11(b)(1) and (c) Signing Pleadings, Motions, and Other Papers; Representations to the Court, . . . “that to the best of the attorney’s or party’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.”

The Respondents’ arguments are froth with deception and perjury and will reveal contempt for the courts. Petitioner is due lost monies from the breach; plus interest and appropriate punitive damages, *i.e.*, sanctions.

- i. Sanctions in the form expenses totaling almost \$1 million were upheld by the Supreme Court for the petitioner’s (1) attempt to deprive the court of jurisdiction by acts of fraud, (2) filing false and frivolous pleadings, and (3) attempting, by other tactics of delay, oppression, harassment, and massive expense to reduce the respondent to exhausted compliance. *Chambers v. NASCO*, 501 U.S. 32 (1991)

- ii. The Court of Appeals likewise rejected the argument that it was error to award sanctions under R.C. 2323.51 against a law firm. Citing to the statutory language that permits an award of sanctions against “a party, the party’s counsel of record, or both” the Court reasoned that unlike Civ. R. 11, which was drafted to impose responsibilities and sanctions on individual attorneys who have signed a pleading, R.C. 2323.51 was drafted more broadly to “afford an avenue of relief to a party adversely affected by frivolous conduct.” Acknowledging that several Ohio appellate courts have construed “counsel of record” to include an attorney’s firm as well as an individual lawyer, the Eleventh District affirmed the trial court’s decision to impose joint and several liability on Keith-Harper’s attorneys’ law firm.

Petitioner Byrd has expended unnecessary monies pursuant to Federal Civil Procedure 1 and 11(b) and (c) arguing the improper Removal, a clear fiduciary breach and if Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 . . . “conduct prejudicial to the effective and expeditious administration of the business of the courts” . . . “unable to discharge all the duties” of the judicial office . . . ” was effective this matter would not have gone to the Sixth Circuit court and this court. The system needs as independent-out-side agency consisting of taxpayers.

The Brief for Opposition failed to address the essence of the original complaint nor acknowledge a Traditional IRA, alleged factually untrue statements as true and violated R. 11. The Brief must be DENIED

as perjurious and without delay award Petitioner Byrd in accordance to the original complaint and any other available reparations associated with R. 11.

Respectfully submitted,

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