

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

J.P. Morgan Securities, LLC  
RBC Capital Markets, LLC

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochtor Kennedy, Esq. and Owen Harnett, Esq.,  
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent J.P. Morgan Securities, LLC ("J.P. Morgan"): Eugene Small, Esq.,  
SmallCalvo, New York, New York.

For Respondent RBC Capital Markets, LLC ("RBC"): Patrick Howley, Esq., RBC Wealth  
Management, Parsippany, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: October 18, 2016.  
Claimant signed the Submission Agreement: October 18, 2016.

Statement of Answer filed by Respondent J.P. Morgan on or about: December 9, 2016.  
J.P. Morgan signed the Submission Agreement: December 8, 2016.

Statement of Answer filed by Respondent RBC on or about: November 17, 2016.  
RBC signed the Submission Agreement: October 31, 2016.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement of customer complaints  
from his CRD records.

Unless specifically admitted in its Answer, Respondent J.P. Morgan denied the  
allegations made in the Statement of Claim.

In its Answer, Respondent RBC did not oppose Claimant's request for expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of two customer dispute occurrences from his CRD record, compensatory damages in the amount of \$1.00, and any and all other relief deemed just and equitable.

Respondent J.P. Morgan did not oppose the request for expungement but requested that the claim for compensatory damages be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

The Arbitrator conducted a recorded telephonic hearing on March 16, 2017 so that the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent J.P. Morgan did not participate in the expungement hearing. The Arbitrator determined that Respondent J.P. Morgan received due notice of the expungement hearing and that the hearing would proceed without Respondent J. P. Morgan present.

The Arbitrator ordered the Claimant to provide a copy of the Statement of Claim to the customers in the underlying disputes and to provide them with the opportunity to participate in the expungement hearing. On March 2, 2017, the customers were duly served with notice of the expungement request and neither of them opposed the request or appeared at the expungement hearing.

The Arbitrator finds that the customers did not participate in the expungement hearing and that a decision on the merits of Claimant's requests can be entered.

The Arbitrator reviewed Claimant's BrokerCheck® Report. She noted that Claimant had not previously requested expungement of the same disclosures in CRD.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from Claimant [REDACTED]' (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;  
The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and  
The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customer's affidavit makes clear that it was misrepresentation and failure to provide timely notice by Bear Stearns & Co. (later Respondent J.P. Morgan) and not by Claimant that led to the underlying complaint. The customer's affidavit states:

"My complaint did not allege any sales practice violation by [REDACTED]. My complaint did not allege that [REDACTED] made any misrepresentations about the products/securities related to TANC or any of my other investments. My complaint did not pose allegations that [REDACTED] failed in any way to communicate timely and appropriately with me regarding any and all products/securities among my investments. Lastly, I did not have or communicate any concerns regarding the suitability of any products/securities among my investments."

In addition, the affidavit and Claimant's testimony confirm that the customer in the underlying complaint remains a customer of Claimant and that he moved his account to RBC when Claimant moved from J.P. Morgan to RBC.

In recommending expungement, the Arbitrator relied upon the following documentary and other evidence: Claimant's testimony; J.P. Morgan's letter dated January 5, 2012 to the agent of the customer in the underlying complaint; August 14, 2008 Report by North American Securities Administrators Association (NASAA) concerning settlements with JP Morgan in auction rate securities investigations; and the customer's affidavit.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from Claimant [REDACTED]' (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Despite the customer's allegation that he lost money in 2011 because his portfolio was less risk averse than he wanted, the record shows that his discretionary account was being managed in accordance with an aggressive high-risk Global Tactical Allocation strategy which had been in place since he opened the account some four years earlier, and moreover, during the relevant period, the customer's discretionary account in fact tracked the global S&P closely. Although the customer was advised that he was free to make changes in his strategy, he never chose to do so, he never chose to avoid international investments, and he never rescinded the discretionary authorization of Claimant to manage his accounts. Accordingly, Claimant's management of the customer's account was suitable and in conformance with the customer's high risk tolerance.

In recommending expungement, the Arbitrator relied upon the following documentary and other evidence: Claimant's testimony; composite performance for the relevant period (chart and graph for the customer and S&P) November, 2011 – January, 2012; letter dated November 14, 2012 from RBC Senior Dispute Resolution Case Manager to the customer; and email communications between the customer and RBC.

3. Claimant's request for compensatory damages is denied.
4. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 50.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, J.P. Morgan Securities, LLC and RBC Capital Markets, LLC are each assessed the following:

Member Surcharge	= \$ 150.00
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**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$50.00/session	
Hearing Date: _____ March 16, 2017      1 session	=\$ 50.00
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Total Hearing Session Fees	=\$ 50.00

The Arbitrator has assessed the \$50.00 hearing session fee to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

Joan M. Traub

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**

Joan M. Traub  
Joan M. Traub  
Sole Public Arbitrator

March 24, 2017  
Signature Date

March 27, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)