

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

Hearing Site: Dallas, Texas

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant" or [REDACTED]): Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent" or "Merrill Lynch"): Lacy M. Triplett, Esq. and Joshua D. Jones, Esq., Bressler, Amery & Ross, PC, Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: October 5, 2016.
Claimant signed the Submission Agreement: October 5, 2016.

Statement of Answer filed on or about: November 28, 2016.
Respondent signed the Submission Agreement: October 20, 2016.

CASE SUMMARY

Claimant asserted the following cause of action: expungement. Claimant requested expungement of a customer complaint, Occurrence # [REDACTED] from his records maintained by the Central Registration Depository ("CRD"). Claimant alleged he recommended Class-C shares in three conservative mutual funds for the customer and that he received the customer's verbal authorization of the trades. Claimant asserted that the customer then made a verbal complaint with Respondent that the proper authorization was not obtained and trade confirmations were never received.

In the Statement of Answer, Respondent confirmed that it did not oppose Claimant's expungement request and that it denied the complaining customer's claims in their entirety, however elected to settle the matter in order to avoid the uncertainty and costs of a threatened arbitration.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$1.00
Other Monetary Relief	Unspecified
Other Non-Monetary Relief	Expungement

Respondent objected to the request for one dollar (\$1.00) in compensatory damages. Specifically, that the Statement of Claim failed to state any claim for relief that may provide the basis for an award of damages to [REDACTED] is precluded from an award of damages because he has not suffered any damages or any legally recognizable injury and/or damages he seeks are speculative and uncertain; and Respondent reserves the right to assert additional defenses insofar as Claimant's claims are clarified in the course of this proceeding or additional evidence is discovered.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about February 16, 2017, Claimant notified FINRA and Respondent that he attempted to serve notice of the Statement of Claim on the customer, however she is deceased.

The Arbitrator conducted a recorded, telephonic hearing on March 27, 2017, so the parties could present oral argument and evidence on [REDACTED] request for expungement. Respondent appeared and participated at the hearing and did not oppose the request for expungement. At the hearing, Claimant orally withdrew his request for compensatory damages in the amount of one dollar (\$1.00).

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]. On or about March 27, 2017, Respondent's counsel provided a copy of the General Release dated March 5, 2009, between the customer and Respondent for the Arbitrator's consideration. The Arbitrator confirmed that he reviewed the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount. The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony from Claimant and Respondent at the expungement hearing on March 27, 2017. Specifically, Claimant testified that the customer's allegations were erroneous and false. Customer verbally instructed Claimant to make the mutual fund trades. Respondent agreed that the mutual fund trades were verbally authorized.

AWARD

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

1. The Arbitrator recommends the expungement of Occurrence # [REDACTED] from registration records maintained by the CRD for Claimant [REDACTED] (CRD # [REDACTED]), 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 13805 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; and
- The claim, allegation, or information is false.

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

[REDACTED] did receive proper authorization for the mutual fund trades. Upon a thorough investigation by Respondent, it was determined that Claimant received verbal authorization for the mutual fund trades from the customer.

FEES

Pursuant to the Code of Arbitration Procedure, 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 a party, Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed the following:

Member Surcharge = \$ 150.00

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) pre-hearing session with a single arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing conference: January 25, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: March 27, 2017 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant [REDACTED]

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

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

ARBITRATOR

David A. Schuler

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

/s/ David A. Schuler

David A. Schuler
Sole Public Arbitrator

April 7, 2017

Signature Date

April 7, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)

Member Surcharge = \$ 150.00

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

ARBITRATOR


David A. Schuler - Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature



David A. Schuler
Sole Public Arbitrator



Signature Date

Date of Service (For FINRA Office of Dispute Resolution office use only)