

**AWARD**  
FINRA DISPUTE RESOLUTION

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CASE #: [REDACTED]  
[REDACTED] vs. Merrill Lynch, Pierce, Fenner & Smith Incorporated  
(Respondent)

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REPRESENTATION OF PARTIES:

For Claimant [REDACTED] Dochter Kennedy, MBA, J.D. and Owen Harnett, Esq.,  
AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Kathryn D.  
Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

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NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: October 19, 2016.

Statement of Answer filed on or about: December 14, 2016.

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CASE SUMMARY: Claimant asserted a claim seeking expungement of customer  
dispute occurrence number [REDACTED] (the "Underlying Claim") from his from his Central  
Registration Depository ("CRD") record.

In the Statement of Answer, Respondent did not oppose the request for expungement  
made by the Claimant, stated that it did not intend to participate in the final hearing on  
this matter, and asserted various affirmative and other defenses.

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RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. Compensatory damages in the amount of \$1.00 from Respondent; and
4. Any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for an award  
for \$1.00 in compensatory damages and "any and all other relief that the Arbitrator  
deems just and equitable." Respondent did not take a position as to Claimant's  
remaining relief requests.

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AWARD: The Arbitrator has decided and determined in full and final resolution of the  
issues submitted for determination as follows:

1. Claimant's request for expungement is granted.

The Arbitrator recommends the expungement of all references to the Underlying  
Claim, being customer dispute occurrence number [REDACTED] from [REDACTED]

[REDACTED] registration records maintained by the CRD, with the understanding that pursuant to Notices to Members 99-09 and 99-54, 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 finding based on the following reasons:

After approximately 30 meetings with Claimant, the customer in the Underlying Claim ("Customer") elected to invest 30% of his portfolio totaling \$20,000.00 in the disputed mutual fund. Following the aforementioned investment, the Customer discussed the investment with Claimant on approximately 25 separate occasions.

The disputed mutual fund performed positively for the duration of Claimant's relationship with the Customer and at one point had increased in value to \$26,000.00. When the disputed mutual fund decreased in value to \$24,000.00, the Customer believed that he had lost value on the investment, despite the fact that the fund had increased by \$4,000.00 from his initial investment.

Following the \$2,000.00 loss, the Customer sent a complaint letter to Merrill Lynch. Merrill Lynch investigated the claim and found that the Customer's allegations were without merit and deemed all investments suitable. Merrill Lynch sent one response letter to the Customer, closed the complaint and requested that the Customer transfer his account. The Customer did not pursue his complaint in arbitration or court. As of January 9, 2007, the dispute status is listed as "Closed/No Action" in Claimant's BrokerCheck® Report.

2. All other relief requests are denied.

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

On March 2, 2017, Claimant filed a copy of a letter from Claimant's counsel to the Customer with copies of the Case Information Sheet and Initial Pre-Hearing Conference Scheduling Order setting the date for the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on April 10, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. The Customer did not appear at the expungement hearing.

During the expungement hearing, the Arbitrator inquired if Claimant's counsel provided a

copy of the Statement of Claim to the Customer and Owen Harnett, counsel for Claimant, responded in the affirmative. During the expungement hearing, Mr. Harnett also withdrew the request for \$1.00 in damages.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that the Customer did not pursue his complaint in arbitration or court, that the dispute status is listed as "Closed/No Action" in Claimant's BrokerCheck® Report, and that there are no settlement documents to review.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the Underlying Claim.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's telephonic testimony; the Statement of Claim and Statement of Answer; and Claimant's BrokerCheck® Report.

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OTHER FEES: Respondent has paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:  
Initial Claim Filing Fee = \$ 50.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

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 the Arbitrator @ \$50.00/session = \$ 50.00  
Pre-hearing conference: February 1, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: April 10, 2017 1 session

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Total Hearing Session Fees = \$100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

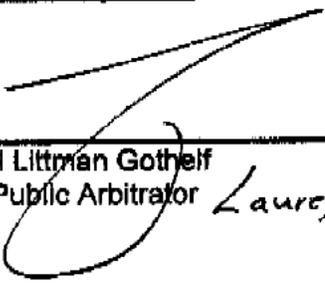
**ARBITRATOR**

Laurel Littman Gothelf

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

  
\_\_\_\_\_  
Laurel Littman Gothelf  
Sole Public Arbitrator

4-17-17  
\_\_\_\_\_  
Signature Date

*Laurel Littman Gothelf, public*

April 17, 2017  
Date of Service (For FINRA-DR office use only)