

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Docthor Kennedy, MBA, J.D. and Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: November 23, 2016.

████████████████████ signed the Submission Agreement: November 23, 2016.

Statement of Answer filed by Respondent on or about: January 18, 2017.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: February 28, 2017.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to a customer complaint, Occurrence No. ██████████ ("Complaint"), recorded by Respondent on Claimant's CRD records.

In the Statement of Answer, Respondent did not contest Claimant's request for expungement, stated that Claimant's request for damages, or any other relief beyond expungement, is unfounded and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to the Complaint from his CRD records; an award of compensatory damages in the amount of \$1.00; and any and all other relief deemed just and equitable.

During the expungement hearing, Claimant withdrew his requests for compensatory damages in the amount of \$1.00 and any and all other equitable relief.

In the Statement of Answer, Respondent did not delineate a relief specific request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about March 21, 2017, Claimant filed with FINRA Office of Dispute Resolution a proof of service of the Statement of Claim to the underlying customer in the Complaint, and advised the customer of her right to participate in the recorded telephonic expungement hearing scheduled for May 9, 2017.

The Arbitrator conducted a recorded telephonic hearing on May 9, 2017, so that the parties could present oral argument and evidence on Claimant's request for expungement. The customer did not appear on the telephonic expungement hearing or contest Claimant's request for expungement.

Respondent appeared on the recorded telephonic expungement hearing and did not contest Claimant's request for expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the BrokerCheck® Report for Claimant; the pleadings and all exhibits; as well as the testimony of Claimant explaining his investment recommendations, that the customer consented to the recommendations and the fee structure, which did not reward Claimant for making trades.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic 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 the above-captioned arbitration from Claimant's (CRD# [REDACTED]) registration records maintained by the CRD, with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 of Arbitration Procedure (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:

An attorney for the customer in the Complaint complained on behalf of the customer that excessive trades were made in an estate account and objected to the Future Access, LLC investment. Claimant explained his reasoning for the trades and the Future Access, LLC investment. The need to diversify from a concentrated position in Exxon Mobil stock and market conditions justified the actions taken. The fees charged were negotiated and discounted. There was no incentive for Claimant to churn the accounts. The customer's claims were factually inaccurate, clearly erroneous and false.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is 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(s), including a pre-hearing conference with the arbitrator(s) 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
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Pre-hearing conference:	February 28, 2017	1 session	
One (1) hearing session on expungement request @	\$50.00/session		= \$ 50.00
Hearing Date:	May 9, 2017	1 session	
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Total Hearing Session Fees			= \$ 100.00

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

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

ARBITRATOR

Harry G. Mason

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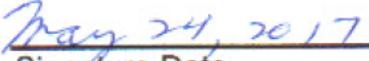
Sole Public Arbitrator

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



Harry G. Mason
Sole Public Arbitrator



Signature Date

May 24, 2017

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