

**AWARD**  
**FINRA DISPUTE RESOLUTION**

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CASE #: [REDACTED]  
[REDACTED] and [REDACTED] (Claimants) vs. Securities  
America, Inc. (Respondent)

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**REPRESENTATION OF PARTIES:**

For Claimants [REDACTED] and [REDACTED]  
Dochter Kennedy, MBA, JD, and Owen Harnett, Esq., AdvisorsLaw, LLC, Broomfield,  
Colorado.

For Respondent Securities America, Inc.: Chad Weaver, Esq., Freeman Mathis & Gary,  
LLP, Hermosa Beach, California.

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**NATURE OF DISPUTE:** Associated Persons vs. Member

Statement of Claim filed on or about: October 2, 2016.  
Amended Statement of Claim filed on or about: April 6, 2017.

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

In the Statement of Answer, Respondent did not dispute the factual representations  
made by Claimant [REDACTED] as it relates to occurrence number [REDACTED] and supported  
Claimant [REDACTED] request to expunge any reference to occurrence number [REDACTED] from  
Claimant [REDACTED] CRD record.

In the Amended Statement of Claim, Claimants asserted claims seeking expungement  
of customer dispute occurrence number [REDACTED] from Claimant [REDACTED] CRD record and  
occurrence number [REDACTED] from Claimant [REDACTED] CRD record (hereinafter  
collectively referred to as the "Occurrences").

In the Statement of Answer to the Amended Statement of Claim, Respondent supported  
Claimants' request to expunge any reference to the Occurrences from Claimants'  
respective CRD records.

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

1. Expungement of occurrence number [REDACTED] from her 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 occurrence number [REDACTED] from her CRD record pursuant to  
FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. Damages in the amount of \$1.00 from Respondent for its part in contributing to  
Claimant [REDACTED] injuries; and
4. Any and all relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimants requested:

1. Expungement of the Occurrences from their respective CRD records pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of the Occurrences from their respective CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. An award of damages in the amount of \$1.00 from Respondent for its part in contributing to their injury; and
4. Any and all relief that the Arbitrator deems just and equitable.

In its Answers, Respondent did not set forth a relief request.

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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) Claimants' requests for damages in the amount of \$1.00 are denied in their entirety.
- 2) Claimants' requests for expungement are granted.

The Arbitrator recommends the expungement of all references to customer dispute occurrence number [REDACTED] from Claimant [REDACTED] (CRD # [REDACTED]) registration records maintained by the CRD and to customer dispute occurrence number [REDACTED] from Claimant [REDACTED] (CRD # [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimants [REDACTED] and [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 of Arbitration Procedure, 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:

The customer in the underlying Occurrences ("Customer") complained of both Claimants that, for their own extra profit, she was "tag-teamed" (pressured, manipulated) into unsuitable investments without full disclosure, when she was most vulnerable, and that when she left their firm, she was forced to sell at a loss. While the notion of an anxious widow has a superficial appeal, the facts show a different story. A sophisticated and experienced investor for many years with a portfolio in excess of \$1.3 million, the Customer has a forceful personality, unlikely to be bullied into anything. She spent many hours with her representatives going over myriad details, took materials home that she was considering and had no difficulty declining opportunities that did not interest her – e.g., municipal bonds, REITs and annuities. She did not ask for arbitration in this case when her complaint was rejected.

The Customer complains of three investments, the first made in November 2014 (more than a year after her husband's death) with which, seven months later, she pronounced herself well pleased. Two other investments were made in July 2015. She acknowledged in writing her receipt of offering materials, including risk assessment. She complained of high up-front fees for the latter two investments, which Claimant [REDACTED] twice offered to cancel and return, but she refused.

The three investments together totaled about \$98,000.00, perhaps 7.5 percent of the Customer's portfolio (60 percent or more in traded stocks). The Customer claimed she was forced to sell them prematurely when she left Claimants' firm, incurring a loss of \$15,000.00 to \$20,000.00. In fact, the Customer could have held the investments for their intended three- to five-year term, so any loss was self-inflicted.

This Arbitrator found no errors or wrongdoing on the part of the investment representatives; indeed, Claimants made extra efforts to satisfy the Customer's varying concerns. Accordingly, the Customer complaint is determined to be both erroneous and false. To maintain the complaints on the brokers' records would be misleading and serve no useful public purpose.

3) All other relief requests are denied.

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

On April 4, 2017, prior to the expungement hearing, counsel for Claimant [REDACTED] filed a motion to amend the Statement of Claim to add Claimant [REDACTED] as an additional claimant, also requesting expungement of the same transactions. On April 6, 2017, the Arbitrator granted the motion and ordered that the expungement hearing will concern both Claimants.

The Arbitrator conducted a recorded in-person hearing on April 11, 2017 so the parties could present oral argument and evidence on Claimants' requests for expungement. Claimants' counsel appeared by videoconference. The Customer appeared in person, participated fully in the expungement hearing, and was privy to all exhibits. The Customer served as a witness and no one objected. The Customer opposed both expungement requests, and also provided written arguments which the Arbitrator determined were not supported by any facts. The Customer was experienced, asked numerous questions and was provided with all relevant information. Neither Respondent nor its counsel appeared.

The Arbitrator noted that in the Respondent's Answers that Respondent did not dispute the factual representations by either Claimant; and that Respondent supports the requests by each of them to expunge all references to Occurrence Nos. [REDACTED] and [REDACTED] from their respective registration records in the CRD.

The Arbitrator reviewed the BrokerCheck® Reports for Claimants. The Arbitrator determined that Claimants provided copies of the Statements of Claim to the Customer.

The Arbitrator noted that Claimants did not previously file a claim requesting expungement of the Occurrences in the CRD. The Arbitrator also noted that the

Customer did not ask for arbitration in this case when her complaint was rejected, and that there are no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Exhibits 1 through 12 from Claimant [REDACTED] Statement of Claim (including her BrokerCheck® Report, SEC letter and response from Securities America), subscription agreements and purchase confirmations; and Exhibits 1 through 16 from the Amended Statement of Claim (including Claimant [REDACTED] BrokerCheck® Report, Customer complaint and activity notes); and the Customer's correspondence regarding each Claimant (the Customer was not a party to the arbitration).

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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 2, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: April 11, 2017 1 session

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Total Hearing Session Fees = \$100.00

The Arbitrator has assessed \$100.00 of the hearing session fees jointly and severally to Claimants.

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

**ARBITRATOR**

Kirtley M. Thiesmeyer

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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



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Kirtley M. Thiesmeyer  
Sole Public Arbitrator

24 May 2017

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Signature Date

May 24, 2017

Date of Service (For FINRA-DR office use only)