

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. RBC Capital Markets, LLC (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Dochter Kennedy, MBA, J.D. and Michael O'Gara, Esq., AdvisorLaw LLC, Broomfield, Colorado

For Respondent RBC Capital Markets, LLC: Bryce Cullinane, Esq., Keesal, Young & Logan, Long Beach, California

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: November 2, 2016

CASE SUMMARY: Claimant requested expungement of a customer complaint with the occurrence number [REDACTED] ("Underlying Claim") from his Central Registration Depository ("CRD") records pursuant to FINRA Rule 2080(b)(1)(B).

RELIEF REQUESTED: In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement of the Underlying Claim from his CRD records, and any and all other relief the Arbitrator deems just and equitable.

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

On January 4, 2017, Respondent submitted an Answer which stated that Respondent will not oppose Claimant's expungement request.

By Order dated April 18, 2017, the Arbitrator required Claimant to serve his claim seeking expungement on the customer in the Underlying Claim ("Customer"), and to file proof of the service with FINRA by May 1, 2017.

On April 21, 2017, Claimant notified FINRA that he forwarded to the Customer the Statement of Claim, including exhibits, Initial Pre-hearing Conference Scheduling Order, and the Case Information Sheet, and provided FINRA with proof of service.

On May 18, 2017, Claimant submitted a notarized letter dated December 14, 2016 from the Customer which stated the following: "[t]his was never intended to be a complaint. This was a misunderstanding. I do not oppose the removal of this dispute off of Mr. [REDACTED] record."

The Arbitrator conducted a recorded telephonic hearing on May 18, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. At the start of the hearing, Claimant advised that Respondent let Claimant know, just prior to the expungement hearing, that Respondent would not participate in the expungement hearing. As indicated in its Answer, Respondent does not oppose Claimant's

expungement request. The Customer did not appear at the expungement hearing. As indicated in his December 14, 2016 letter, the Customer does not oppose Claimant's expungement request.

The Arbitrator reviewed the Claimant's BrokerCheck® Report. There was no settlement agreement for the Arbitrator to review since the parties did not reach a settlement in the Underlying Claim.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony concerning suitability, the Customer's notarized letter dated December 14, 2016 withdrawing the complaint, and the fact that the Customer is still working with Claimant.

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

During the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

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

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

The Arbitrator has made the above Rule 2080 finding based on the following reasons: The Customer did not purchase and hold NLY (Annaly Capital Management - the investment the Customer complained about) at the recommendation of Claimant. The Customer acted on his own volition. Claimant cannot be responsible for the transactions at Charles Schwab. Claimant had limited involvement. He knew of the Customer's purchase of NLY and knew that it was being held. But, the purchase and holding of NLY was not unsuitable, which is the complaint. So, although Claimant was involved in the purchase to the extent that he acquired knowledge of the purchase and knew that NLY was being held, the purchase and holding of the NLY REIT was not an investment related sales practice violation. Therefore, Claimant is entitled to expungement because the claim is false, not because of lack of involvement, because Claimant was involved. The investment was not unsuitable.

2. All other relief requests are denied.

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(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) hearing session on expungement request @\$50.00/session	= \$ 50.00
Hearing Date May 18, 2017 1 session	
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Total Hearing session fees	= \$ 50.00

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

ARBITRATOR

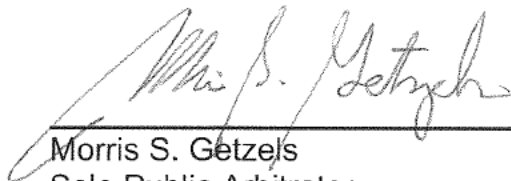
Morris S. Getzels

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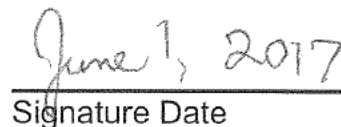
Sole Public Arbitrator

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



Morris S. Getzels
Sole Public Arbitrator



Signature Date

June 1, 2017
Date of Service (For FINRA-ODR office use only)