

AWARD
FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc.
(Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Dochter Kennedy, AdvisorLaw LLC, Broomfield, Colorado.

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

NATURE OF DISPUTE: Associated Person vs. Member

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

CASE SUMMARY: Claimant asserted the following cause of action: expungement.

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

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 reference to the customer complaint (occurrence number [REDACTED]) from [REDACTED] (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16, [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 made the above Rule 2080 findings based on the following reasons:

A letter on complaint was sent to Respondent in 2006 from a former customer of the Claimant. The customer alleged that Claimant made unsuitable investment recommendations. The customer did not pursue her complaint in arbitration or court. Claimant credibly testified that she had been employed by Respondent for 28 years. She further testified that she formed a partnership with another registered representative and that the customer was an existing customer. Claimant testified that the customer had expressed a willingness to assume risk, wanted growth, and was 100% invested in equities. She further testified that the above directives were indicated in the customer consults questionnaire and in Respondent's Retirement Builder. Claimant testified that based upon frequent discussions with the customer concerning her retirement planning and the state of the market, Claimant and her partner made repeated recommendations that the customer reallocate her portfolio. The customer chose not to take these recommendations and opted instead to remain 100% invested in equities. Claimant testified that sometime in 2001 the customer closed her account and left the Respondent. In 2006, to Claimant's surprise, the customer sent her complaint letter to Respondent. Claimant testified that at no time prior to 2006 did the customer express any complaints about her account. Claimant provided a copy of her current BrokerCheck Report which indicates that there is only one customer complaint against her. The Arbitrator reviewed a memo sent by Claimant and her partner to Respondent in response to the customer's complaint. The memo detailed the customer's investment directives and the history of her relationship with Claimant and her partner. The Arbitrator also reviewed the Report Summary, sent to Respondent concerning the customer. Respondent's findings were that the customer's complaint was found to be without merit. The Arbitrator also reviewed a copy of a letter from Claimant's counsel to the customer, setting the time and date of the expungement hearing including a copy of Claimant's complaint. This letter was certified and was returned and stamped "refused" by the Post Office.

2. All other relief requests are denied.

3. FINRA Dispute Resolution shall retain the \$50.00 filing fee that the Claimant deposited previously.

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

One (1) Hearing session on expungement request @ \$50.00	= \$	50.00
Hearing Date: May 30, 2017 1 session		
Total Hearing Session Fees	= \$	50.00

The Arbitrator has assessed the \$50.00 expungement hearing session fee to Claimant.

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

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

The Arbitrator conducted a recorded telephonic expungement hearing on May 30, 2017 so that the parties could present oral argument on Claimant's request for expungement of her CRD record. Respondent did not contest Claimant's request for expungement.

At the beginning of the hearing Claimant withdrew her request for compensatory damages.

The customer in the underlying claim did not participate in the expungement hearing. The Arbitrator determined that the customer received a copy of the Statement of Claim and received due notice of the expungement hearing and that the hearing would proceed without her present. The customer did not oppose Claimant's request for expungement.

The Arbitrator reviewed the BrokerCheck Report for Claimant.

Claimant did not previously file a claim requesting expungement of the same disclosure from the CRD.

In recommending expungement, the Arbitrator relied upon the pleadings; party submissions; the testimony of the Claimant; and the BrokerCheck Report for the Claimant.

ARBITRATOR

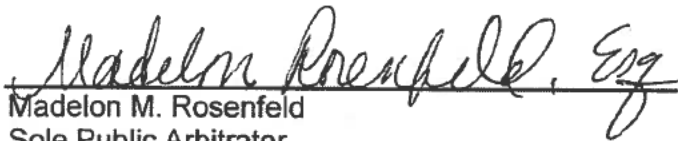
Madelon M. Rosenfeld

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature


Madelon M. Rosenfeld
Sole Public Arbitrator


Signature Date

June 12, 2017
Date of Service (For FINRA-ODR office use only)