

**AWARD**

FINRA Office of DISPUTE RESOLUTION

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CASE [REDACTED]

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

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**REPRESENTATION OF PARTIES:**

For Claimant [REDACTED]: Michael O'Gara, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Joshua D. Jones, 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: November 7, 2016.  
Statement of Answer filed on or about: January 10, 2017.

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

In the Statement of Answer, Respondent does not oppose the request for expungement made by Claimant, asserted various affirmative and other defenses, and objected to Claimant's request for \$1.00 in compensatory damages.

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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. An award of compensatory damages in the amount of \$1.00 from the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

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

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**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 occurrence number [REDACTED], from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, 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 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 findings based on the following reasons:

The customer that filed the Underlying Claim (“Customer”) and Claimant had an excellent business relationship that began years before said allegation, and continued following said allegations.

In the summer of 2008, Claimant made a recommendation that the Customer purchase an investment grade preferred stock of a large bank. The stock was recommended by the Respondent’s syndicate department as suitable for the Customer’s investor profile and it was familiar to the Customer as she had purchased similar investments in the past.

The Customer agreed with the recommendation and elected to purchase 2,000 shares of the stock at a price of \$25.00 per share, which amounted to less than 10% of her portfolio. The Customer’s purchase was underwritten by Respondent.

In the fall of 2008, the stock market declined dramatically, as a result of an unprecedented financial crisis. As a result of said crisis, preferred stocks of banks began to weaken, as did the Customer’s stock.

Claimant discussed the financial crisis and the resulting state of her stock with the Customer. Per the Customer’s authorization, Claimant liquidated 2,000 shares of the bank stock.

Shortly after, the Customer stated to the Claimant that she only intended to sell 1,000 shares rather than 2,000 shares.

To remedy the situation, Claimant processed a trade correction to put 1,000 shares back into the Customer’s account. Said correction incurred a \$300.00 loss which was then charged against Claimant, per Respondent’s policy at the time.

The Customer’s situation was fully remedied by the aforementioned action of Claimant. However, because the Customer made the request to reinstate her 1,000 shares in writing, it was logged as a complaint and appeared on Claimant’s CRD.

As of September 16, 2009, Respondent denied the Customer's claims that Claimant made an unauthorized trade and unsuitable investment recommendations.

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

Respondent did not oppose Claimant's request for expungement.

On March 23, 2017, Claimant filed a copy of a letter with FINRA Office of Dispute Resolution evidencing that the Customer was served with copies of the Case Information Sheet, Statement of Claim, and Initial Pre-Hearing Conference Scheduling Order setting the date for the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on May 26, 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. Claimant checked the tracking number for the package containing copies of the Case Information Sheet, Statement of Claim, and Initial Pre-Hearing Conference Scheduling Order setting the date for the expungement hearing, and the Customer did receive the notice of the hearing, and the claim and response and chose not to appear.

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

The Arbitrator notes that no settlement was reached as the Underlying Claim was denied by Respondent, and the Customer did not pursue the complaint further in either arbitration or litigation. As such, the Arbitrator determined there were no settlement documents to review.

The Arbitrator notes that Claimant did not previously file a claim requesting expungement of same disclosure.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim including attached exhibits 1-4; Statement of Answer; telephonic testimony of Claimant; and Claimant's BrokerCheck<sup>®</sup> 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: March 13, 2017 1 session  
One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: May 26, 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

  
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Laurel Littman Gothelf  
Sole Public Arbitrator

6-9-17  
Signature Date

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