

**AWARD**

FINRA Office of DISPUTE RESOLUTION

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CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Piper Jaffray & Co. (Respondent)

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REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Owen Harnett, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Piper Jaffray & Co.: John Geelan, Esq., Piper Jaffray & Co., Minneapolis, Minnesota.

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NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: November 21, 2016.

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CASE SUMMARY: In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer dispute filed by Ms. L, with an occurrence number of [REDACTED] ("Underlying Claim") from his Central Registration Depository ("CRD") records.

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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) finding 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) finding the claim, allegation or information is false;
  3. An award of damages in the amount of \$1.00 for Respondent's part in contributing to Claimant's injury; and
  4. Any and all other relief that the Arbitrator deems just and equitable.
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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) 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 ("Code"), the Arbitrator has made specific 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 claim by Ms. L of unauthorized trading in her account by Claimant is clearly erroneous and satisfies the requirements of FINRA Rule 2080(b)(1)(A) and the claim is also false and satisfies FINRA Rule 2080(b)(1)(C). Claimant sent confirmations of the underlying transactions and spoke frequently by telephone to Ms. L from October of 1999 through January of 2000, the duration of the relationship, during which time Ms. L never expressed concerns regarding unauthorized trading. As to suitability, the Arbitrator finds the investments to be compatible with Ms. L's risk profile and notes that the \$100,000.00 invested by Ms. L represented 5% of her net worth exclusive of real property and her losses equaled \$8,047.09. This was a time of extremely high volatility in the market (the dotcom bubble) and had Ms. L not sold on February 11, 2000, by March 1, 2000, her \$8,000.00 loss would have been an \$11,000.00 gain.

Ms. L filed a complaint with Respondent, and in a letter by Respondent's Surveillance Analyst Debi Lucke dated March 7, 2000, Respondent denied Ms. L's plea stating that: "I can find no reason to believe that [REDACTED] did not fully discuss with you the basis for his recommendations, or that you did not understand that the securities in question would be purchased in your account."

Ms. L later filed a claim with NASD (now known as FINRA Office of Dispute Resolution) and in a written memorandum dated December 3, 2001, the Arbitrator Kenneth J. Diamond found that Claimant acquired stock that Claimant had discussed with Ms. L and dismissed the claim.

Ms. L submitted an email (which is co-written by an otherwise unidentified Mr. R) on June 2, 2017 in which she stated that she would only endorse the expungement of Claimant's CRD were she to be paid the \$8,047.09 that she lost in her investments with him.

In conclusion, expungement is recommended in this case as the necessary standards of FINRA Rule 2080 (b)(1)(A) and (b)(1)(C) in all, or in part, were met and to have the information remain on Claimant's CRD record serves no meaningful investor protection or regulatory value.

2) Any and all claims for relief not specifically addressed herein are denied.

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

In its Statement of Answer, Respondent advised it does not oppose Claimant's request for expungement, and it does not anticipate appearing any further in this matter.

The Arbitrator determined that Ms. L was provided with the Statement of Claim and informed of her right to participate in the expungement hearing by testifying, presenting evidence, and conducting cross examination. Ms. L chose not to participate but she did submit comments in an email to FINRA dated June 2, 2017, in which she conditionally opposes expungement.

The Arbitrator conducted a recorded telephonic hearing on June 7, 2017 so Claimant could present oral argument and evidence on his request for expungement. Respondent, Respondent's counsel, and Ms. L did not participate in the expungement hearing.

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

The Arbitrator notes that Claimant did not previously file claims requesting expungement of the same disclosure. The Arbitrator also notes that no settlement agreement exists in connection with the disclosure as the Underlying Claim was resolved in arbitration, and the claims were denied.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's sworn testimony and the arguments found in the Statement of Claim, both of which were found to be credible, and weight was also given to the combined denial of Ms. L's claim by both Respondent and NASD. While the Arbitrator understands that Ms. L is unhappy with the disposition of those findings, her June 2, 2017 email was considered, but not convincing. The Arbitrator also reviewed Claimant's BrokerCheck® 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) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: June 6, 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.

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

**ARBITRATOR**

Michael Lancaster Garcia

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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



Michael Lancaster Garcia  
Sole Public Arbitrator



Signature Date

June 21, 2017

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