

**AWARD**

FINRA Office of DISPUTE RESOLUTION

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CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Edward Jones (Respondent)

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**REPRESENTATION OF PARTIES:**

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

For Respondent Edward Jones: Elizabeth H. Lindh, Esq., Keesal, Young & Logan, Long Beach, California.

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

Statement of Claim filed on or about: December 9, 2016.

Response to Statement of Claim and Amended Response to Statement of Claim filed by Respondent on or about: February 7, 2017.

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**CASE SUMMARY:** Claimant filed a claim seeking the expungement of customer dispute occurrence number [REDACTED]. The claim relates to a customer complaint by Mr. W (the “Underlying Occurrence”).

In its Response, Respondent stated that it denied Mr. W’s complaint and does not oppose Claimant’s request for expungement of the customer complaint from Claimant’s Central Registration Depository (“CRD”) record.

In its Amended Response, Respondent stated that it denied Mr. W’s complaint, does not oppose Claimant’s request for expungement of the customer complaint from Claimant’s CRD record, but does object to the request for one dollar in compensatory damages, and asserted various affirmative and other defenses.

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

- 1) Expungement of the Underlying Occurrence from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claims, allegations, or information is factually impossible or clearly erroneous;
- 2) Expungement of the Underlying Occurrence from his CRD record 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 the Claimant’s injury; and
- 4) Any and all other relief that the Arbitrator deems just and equitable.

In the Response, Respondent did not set forth a relief request.

In the Amended Response, Respondent requested denial of Claimant’s request for damages.

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

On April 27, 2017, Claimant submitted copies of correspondence sent to Mr. W containing the Case Information Sheet setting forth the scheduled expungement hearing date, the Initial Pre-Hearing Conference Scheduling Order also setting forth the expungement hearing date, the Statement of Claim dated December 9, 2016, and Claimant's BrokerCheck® Report. The submission included a copy of the certified mail receipt from Claimant's counsel to Mr. W.

On May 31, 2017, Claimant submitted a letter from Respondent to Mr. W dated December 24, 2008, wherein Respondent denied Mr. W's complaint.

On June 21, 2017, Claimant submitted Proof of Delivery of the April 27, 2017 correspondence sent to Mr. W. The Proof of Delivery noted that the correspondence had been sent by certified First-Class Mail and had been delivered, left with an individual, on or about May 9, 2017.

The Arbitrator conducted a recorded telephonic hearing on June 21, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement of the Underlying Occurrence. Respondent's counsel appeared at the expungement hearing and did not contest the expungement request. The Arbitrator determined that the customer had notice of the expungement hearing but did not appear.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

Based on the testimony of Claimant and the representations of his counsel made at the expungement hearing, the Arbitrator determined that the customer decided not to pursue his underlying complaint and therefore there were no settlement documents to review. The Arbitrator also noted that, aside from stating they did not object to the removal of the comments from Claimant's CRD, Respondent's counsel remained silent through the hearing and did not respond to Claimant's testimony or the representations of his counsel. The Arbitrator also noted that there was no arbitration case concerning the underlying complaint.

The Arbitrator determined that Claimant did not previously request removal of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's uncontroverted testimony during the expungement hearing.

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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) Claimant's request for \$1.00 in damages is denied. No evidence of any damages was presented.
- 2) The Arbitrator recommends the expungement of all references to customer dispute 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Uncontroverted testimony established the lack of involvement of Claimant in the customer related events giving rise to the entry in question. Claimant testified that he had nothing to do with the transactions that Mr. W complained about. Claimant also testified that he did not handle the transactions or represent Mr. W in connection with said transactions. Mr. W was given notice of the hearing, but did not appear. No contradictory testimony was offered.

3) All other relief requests are denied.

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OTHER FEES: Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

**Filing Fees**

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.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$150.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed:

June 20, 2017, postponement by the parties = \$ 50.00

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Total Postponement Fees = \$ 50.00

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

**Hearing Session Fees and Assessments**

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) pre-hearing session with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: April 3, 2017 1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: June 21, 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**

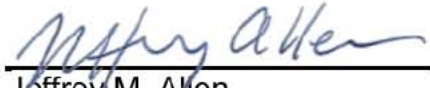
Jeffrey M. Allen

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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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Jeffrey M. Allen  
Sole Public Arbitrator

8/15/2017

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Signature Date

August 16, 2017  
Date of Service (For FINRA-ODR office use only)