

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondents

AXA Advisors, LLC  
The Equitable Life Assurance Society  
of The United States

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] Docthor Kennedy, Esq. and Owen Harnett, Esq.,  
AdvisorLaw LLC, Broomfield, Colorado.

For Respondents AXA Advisors, LLC ("AXA"), and The Equitable Life Assurance  
Society of the United States ("Equitable"): Cheryl Howard, Esq., AXA Advisors, LLC,  
New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: November 8, 2016.  
Claimant signed the Submission Agreement: November 8, 2016.

Joint Statement of Answer filed by Respondents on or about: December 29, 2016.  
AXA signed the Submission Agreement: December 29, 2016.  
Equitable did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement of customer complaints  
from his CRD records.

Unless specifically admitted in the Statement of Answer, Respondents denied the  
allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] from his CRD records, compensatory damages in the amount of \$1.00, and any and all other relief as deemed just and equitable.

In the Statement of Answer, Respondents requested an award dismissing them from this matter, imposing all forum fees against Claimant, and such other and further relief as deemed just and appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Respondent Equitable did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded telephonic hearing on June 29, 2017 so that the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Claimant not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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

On April 3, 2017 and June 23, 2017, Claimant notified the customers in the underlying complaints of his request for expungement and of their right to participate and testify at the expungement hearing and Claimant provided the customers with a copy of the Statement of Claim. The customers did not oppose the request or appear at the expungement hearing.

On June 29, 2017, Claimant re-notified the customer in the underlying complaint regarding Occurrence Number [REDACTED] of his request for expungement and that the Arbitrator kept the hearing open to allow the customer to participate or provide written testimony regarding the expungement request. The customer did not oppose the request or respond to the notice.

The Arbitrator finds that the customers do not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's credible testimony, and the exhibits.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] from the registration records maintained by the Central Registration Depository ("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 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Respondent Equitable, Claimant's employer at the time of the customer complaints, did thorough investigations and determined that there were no bases for the complaints. The customers in the underlying complaints as well as Respondents did not oppose the expungement request and in fact, the Respondents confirmed some of the testimony, such as the thoroughness of the investigations done by Respondent Equitable.

Regarding Occurrence Number [REDACTED], the exhibits show that, contrary to the customer complaint, the policy was not in fact presented as being paid up after 7 years of premium payments. Although Respondent Equitable settled the complaint, it did not admit any wrongdoing and Claimant did not contribute to the settlement.

2. Claimant's request for expungement of Occurrence Number [REDACTED] is denied.
3. Any and all claims for relief not specifically addressed herein, including compensatory damages, are denied.

## 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, AXA Advisors, LLC and The Equitable Life Assurance Society of the United States are each assessed the following:

Member Surcharge = \$ 150.00

### Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 15, 2017 postponement by the parties = \$50.00

1. The Arbitrator has assessed \$25.00 of the postponement fees to Claimant.
2. The Arbitrator has assessed \$25.00 of the postponement fees jointly and severally to Respondents.

### 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, 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 @ \$50.00/session = \$ 50.00  
Pre-hearing conference: March 7, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: June 29, 2017 1 session

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Total Hearing Session Fees = \$100.00

1. The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant, which includes the \$50.00 fee for the June 29, 2017 expungement hearing.
2. The Arbitrator has assessed \$25.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATOR**

Ellyn S. Roth

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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**

*Ellyn S. Roth*

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Ellyn S. Roth  
Sole Public Arbitrator

August 29, 2017

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Signature Date

**August 29, 2017**

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Date of Service (For FINRA Office of Dispute Resolution office use only)