

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] vs. Securities America, Inc., Parkland Securities, LLC, and Cetera Advisors LLC

REPRESENTATION OF PARTIES:

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

For Respondent Securities America, Inc. ("Securities America"): Denis C. Dice, Esq., Winget Spadafora & Schwartzberg, LLP, Philadelphia, Pennsylvania.

For Respondent Parkland Securities, LLC ("Parkland"): John McClellan, Parkland Securities, LLC, Ann Arbor, Michigan.

For Respondent Cetera Advisors LLC ("Cetera"): David G. Smitham, Esq., Cetera Financial Group, New York, New York.

Securities America, Parkland, and Cetera are hereinafter collectively referred to as "Respondents."

NATURE OF DISPUTE: Associated Person vs. Members

Statement of Claim filed on or about: December 1, 2016.

Statement of Answer filed by Securities America on or about: February 2, 2017.

Statement of Answer filed by Parkland on or about: February 6, 2017.

Statement of Answer filed by Cetera on or about: January 12, 2017.

CASE SUMMARY: Claimant asserted a claim seeking expungement of the following customer disputes: Occurrence Numbers [REDACTED]; [REDACTED]; and [REDACTED] (collectively, the "Complaints") from his Central Registration Depository ("CRD") record.

Unless otherwise admitted in the Statement of Answer, Securities America denied the allegations in the Statement of Claim and asserted various affirmative defenses.

Unless otherwise admitted in the Statement of Answer, Parkland denied the allegations in the Statement of Claim.

Unless otherwise admitted in the Statement of Answer, Cetera advised that it will defer to the Arbitrator's findings in this matter as to whether the Complaints should be expunged and requested that it be given the opportunity to attend any final hearing by telephone.

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

- 1) Expungement of Occurrence Numbers [REDACTED] and [REDACTED] 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 Occurrence Number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
- 3) Expungement of Occurrence Numbers [REDACTED] and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
- 4) Damages in the amount of \$1.00 from Respondents for their part in contributing to Claimant's injury; and
- 5) Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Securities America did not oppose Claimant's request for expungement of Occurrence Number [REDACTED], requested that Claimant be denied any damages, and any other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Parkland requested:

- 1) Denial of Claimant's petition for expungement in its entirety;
- 2) Claimant take nothing by way of the Statement of Claim;
- 3) Parkland's portion of the forum fees be assessed against Claimant in accordance with FINRA Rule 13805(d);
- 4) Costs and expenses incurred in defending this action; and
- 5) Such other and further relief as the Arbitrator deems just and proper.

In the Statement of Answer, Cetera requested:

- 1) An Award on the issue of whether to recommend that the customer complaints at issue be expunged from Claimant's CRD record in the form required by FINRA Rule 2080;
- 2) Denial of all other requests for relief; and
- 3) An order that all forum costs are assessed against Claimant.

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

On May 30, 2017, Claimant filed copies of the service letters on all the individual customers from the Complaints. Said service letters enclosed the Case Information Sheet, including the scheduled hearing date; Initial Pre-Hearing Conference Scheduling Order; and the Statement of Claim in this case dated December 1, 2016.

On July 21, 2017, the Arbitrator conducted a recorded telephonic hearing so the parties could present oral argument and evidence on Claimant's request for expungement. Counsel for Respondents appeared at the expungement hearing and did not contest the request for expungement. The customers from Occurrence Number [REDACTED] appeared at the expungement hearing and contested the expungement of Occurrence Number [REDACTED]. None of the customers from the other complaints, nor their respective counsel, appeared at the expungement hearing or filed a response.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator found that Claimant did not previously file a claim requesting expungement of the Complaints from his CRD record.

Occurrence Numbers [REDACTED] and [REDACTED]

The Arbitrator notes that Occurrence Number [REDACTED] relates to FINRA Arbitration Case Number [REDACTED] and that Occurrence Number [REDACTED] relates to FINRA Arbitration Case Number [REDACTED]. Therefore, any reference to these Occurrence Numbers applies to the underlying FINRA arbitration cases.

On February 20, 2017, Claimant filed the following documents in support of his request for expungement of Occurrence Number [REDACTED]: Statement of Claim, Statement of Answer and the Settlement Agreement from FINRA Arbitration Case Number [REDACTED].

On April 3, 2017, Claimant filed the following documents in support of this request for expungement of Occurrence Number [REDACTED]: Statement of Claim, Statement of Answer and the Settlement Agreement and Release from FINRA Arbitration Case Number [REDACTED].

On July 14, 2017, Claimant filed copies of the service letters on the attorneys who represented the customers in Occurrence Number [REDACTED]. Said service letters enclosed the Case Information Sheet, including scheduled hearing date; Initial Pre-Hearing Conference Scheduling Order; and the Statement of Claim in this case dated December 1, 2016. On July 19, 2017, Claimant filed copies of the Proof of Service documents for said service letters.

The Arbitrator noted that Claimant did not file copies of service letters on the attorneys who represented the customers from Occurrence Number [REDACTED]. As noted above, however, Claimant served the individual customers from Occurrence Number [REDACTED].

The Arbitrator reviewed the settlement documents relating to Occurrence Numbers [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of said settlements.

The Arbitrator noted that settlement of Occurrence Numbers [REDACTED] and [REDACTED] was not conditioned on the customers in said arbitration cases not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount in Occurrence Number [REDACTED]; however, the Arbitrator noted that as the sole Respondent in that case, Claimant contributed to the settlement amount in Occurrence Number [REDACTED].

In recommending expungement of Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; and the documents filed in FINRA Arbitration Case Number [REDACTED].

Occurrence Number [REDACTED]

On February 7, 2017, Claimant filed a copy of the February 18, 2016 complaint letter sent directly to Claimant from the customers in Occurrence Number [REDACTED].

The Arbitrator determined that there are no settlement documents regarding Occurrence Number [REDACTED].

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 in its entirety.
- 2) Claimant's requests for expungement of Occurrence Number [REDACTED] (FINRA Arbitration Case Number [REDACTED]) and Occurrence Number [REDACTED] are denied.
- 3) Claimant's request for expungement of Occurrence Number [REDACTED] (FINRA Arbitration Case Number [REDACTED]) is granted.

The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] (FINRA Arbitration Case 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 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.

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

The Arbitrator determined that the customers' loss in Occurrence Number [REDACTED] (FINRA Arbitration Case Number [REDACTED]) was due to the fraudulent conduct of MedCap and the sales practices of Securities America. The Arbitrator found that MedCap concealed its malfeasance from brokers such as Securities America and Claimant could not have discovered MedCap's malfeasance. Therefore, Claimant was not involved in the sales practices violation and was not a party to the customers' claim against Securities America.

- 4) All other relief requests are denied.

FEES: Pursuant to the Code, 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 parties, Securities America, Parkland, and Cetera are each assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

June 20, 2017, postponement by the customers from
Occurrence Number [REDACTED] = Waived

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: March 31, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: July 21, 2017 1 session

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.

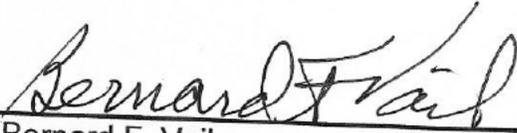
ARBITRATOR

Bernard F. Vail

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



Bernard F. Vail
Sole Public Arbitrator

Aug. 29, 2017
Signature Date

August 30, 2017
Date of Service (For FINRA-ODR office use only)