

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number:

[REDACTED]

vs.

Respondent

Cetera Investment Services LLC

Hearing Site: Wilmington, Delaware

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Cetera Investment Services LLC: Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on or about: January 19, 2017.

[REDACTED] signed the Submission Agreement: January 19, 2017.

Statement of Answer filed by Respondents on or about: March 14 2017.

Cetera Investment Services LLC signed the Submission Agreement: March 17, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement of his CRD records, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for \$1.00 in compensatory damages and that all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic expungement hearing on August 14, 2017 so that the parties could present oral argument on Claimant's request for expungement of his CRD record. Respondent did not contest Claimant's request for expungement.

At the beginning of the hearing, Claimant withdrew his request for compensatory damages.

The customers in the underlying claims did not participate in the expungement hearing. The Arbitrator determined that the customers received a copy of the Statement of Claim and received due notice of the expungement hearing and that the hearing would proceed without customers present. The customers did not oppose Claimant's request for expungement.

The Arbitrator reviewed the BrokerCheck Report for Claimant.

Claimant did not previously file a claim requesting expungement of the same disclosures from the CRD.

In recommending expungement, the Arbitrator relied upon the pleadings; party submissions; the testimony of the Claimant; and the BrokerCheck Report for the Claimant.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, 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 reference to the customer complaints (occurrence numbers [REDACTED] and [REDACTED]) from [REDACTED] (CRD # [REDACTED]) registration records maintained by the Central Registration Depository ("CRD"), with the understanding that, pursuant to Notice to Members 04-16 [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 findings of fact:

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

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

The first matter (occurrence number [REDACTED]) is a claim from 2007. The customer claimed- two years after the fact- that he had not received a prospectus for a product he had purchased and was not aware of the so-called 'freelook' period for the product, which would have enabled him under certain circumstances to reverse the transaction. The customer's investment goals were growth and income, and his risk tolerance was moderate. Consistent with this, Claimant recommended, and customer purchased, a Hartford Director Variable Annuity. Claimant reviewed all aspects of the purchase with customer, including the prospectus and 'free look' provisions, and customer acknowledged in writing that he had received and reviewed all materials relevant to the purchase, which was in all respects suitable for him. Additionally, the customer met Claimant periodically over the ensuing two years and voiced no concerns about the annuity. It further appears that customer's complaint was driven by a desire to avoid a contingent sales charge imposed by Hartford on the liquidation of the investment. The customer was advised of Claimant's application but did not appear or otherwise contest it.

The second matter (occurrence number [REDACTED]) was a claim made by customers in 2008. This claim also involves a Hartford product, but not in the investment sense. Rather, it arose out of the complete misrepresentation by the Hartford of the contingent deferred sales charge to be imposed on a 1035 exchange of a Hartford annuity to a variable Jackson annuity. The exchange would protect the customers from taxation on a \$200,000.00 gain in the Hartford product. Essentially, Claimant was advised by the Hartford that the CDSC was \$5,000.00, when in reality it came out to almost \$35,000.00. Claimant received no satisfactory response from Hartford as to this glaring discrepancy. Eventually Claimant was able to get the charge reversed, but the customers claimed that each position sold should also be reinstated. The claim was settled by the firm for \$17,000.00, no part of which was paid by Claimant. Despite best efforts by counsel, a copy of the settlement agreement, which was executed a number of years before the change in FINRA's regulations concerning the conditioning of settlements on consent to expungement, was not available. The customers did indicate at the time, however, that they did not hold Claimant responsible for the error. Additionally, they were notified of this proceeding but made no appearance or objection.

Claimant testified that he has made no prior application for the relief sought herein. Additionally, he testified that the presence of these occurrences on his CRD has had a continuing impact on his business development. Finally, it is apparent that there will be no adverse implications to the investing public if these matters are expunged.

2. All other relief requests 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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Cetera Investment Services, LLC is assessed the following:

Member Surcharge = \$ 150.00

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 with a single arbitrator @ \$50.00 = \$ 50.00
Pre-hearing conference: May 22, 2017 1 session

One (1) Hearing session on expungement request @ \$50.00 = \$ 50.00
Hearing Date: August 14, 2017 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

ARBITRATOR

Robert E. Anderson

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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



Robert E. Anderson
Sole Public Arbitrator



Signature Date

September 5, 2017

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