

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Banc of America Investment Services Inc. (Respondent)

REPRESENTATION OF PARTIES:

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

For Respondent Banc of America Investment Services Inc.: Randi P. Spallina, Esq., Bressler, Amery & Ross, Fort Lauderdale, Florida.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: February 3, 2017.

CASE SUMMARY: Claimant asserted a claim seeking expungement of customer dispute occurrence numbers [REDACTED], [REDACTED] and [REDACTED] ("Underlying Claims") from her Central Registration Depository ("CRD") records.

In the Statement of Answer and Amended Statement of Answer, Respondent asserted affirmative and other defenses in connection to Claimant's request for damages and reserved its right to assert additional defenses. Respondent further advised that it takes no position on Claimant's request for expungement and it does not intend to participate in the hearing of the matter.

RELIEF REQUESTED:

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from her 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 Claims from her 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 undersigned 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 the Underlying Claims, namely, occurrence numbers [REDACTED], [REDACTED] and [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, 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 below for each of the Underlying Claims.

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 finding based on the following reasons:

Occurrence number [REDACTED] (in which "Mr. G." is the customer in the underlying claim): Mr. G. filed a complaint against Claimant alleging that Claimant misrepresented the risks associated with the preferred equities purchased in 2007. The claim is false, clearly erroneous and factually impossible.

Claimant fully disclosed the risks associated with the preferred equities that were purchased by Mr. G. Claimant did so both verbally and in writing over the course of several months during numerous discussions with Mr. G. In fact, Mr. G. signed an acknowledgement of the involved risks which was a pre-requisite to purchasing the preferred stocks at issue and contradicts her claim for any misrepresentation made.

Mr. G. received the prospectus for each stock he purchased as well as confirmation and monthly statements. Claimant explained to Mr. G that preferred stocks are not FDIC insured or bank guaranteed and had the potential to lose value and that past performance did not guarantee future results.

In 2008, an unprecedented and widely publicized credit crisis occurred. Due to the credit crisis and the corresponding financial market crash, some preferred securities experienced unexpected and extremely irregular price volatility including the preferred stock at issue.

After Respondent's investigation into Mr. G.'s complaint against Claimant, Respondent elected to settle the matter in order to avoid costs of litigation. Claimant was not asked to contribute to the settlement and did not contribute.

Occurrence number [REDACTED] (in which "Corporation H." is the customer in the underlying claim): Corporation H. claimed that Claimant failed to follow instructions to partially sell a HSBC Corporate Note ("the Bond") in July 2008. This allegation is factually impossible and clearly erroneous because in July 2008 Corporation H. contacted Claimant and instructed her to sell \$500,000.00 of the Bond. However, Corporation H. explicitly stipulated that the Bond was to be sold

at par or above and it did not authorize the sale below par. Claimant followed Corporation H.'s instructions and placed the sell order as soon as the price of the Bond was above par.

Corporation H. did not settle said trade by the end of the day however and the price of the Bond subsequently continued to decline.

The price of the Bond did not rise to par or above again. Corporation H. never provided authorization to sell at the market price and the market price never again met or surpassed par. Therefore, the customer never gave authorization to sell under the circumstances Claimant could have acted upon.

Furthermore, Corporation H.'s allegation is "false" because Claimant actually followed Corporation H.'s instructions not to sell unless the Bond was at par or above. It was precisely because Claimant followed Corporation H.'s instruction that Claimant was unable to sell the Bond.

In its investigation into the customer's complaint, Respondent determined that Claimant properly adhered to the instruction of Corporation H. Respondent denied the customer's complaint and Corporation H. took no further action.

Occurrence number [REDACTED] (in which "Ms. S." is the customer in the underlying claim): On February 24, 2009, Ms. S. alleged that Claimant "misled them – Ms. S.'s own investment and those of the company she was president of – regarding the purchases of preferred equities that began in May 2008 as the equities had declined significantly in value." This statement is clearly erroneous and factually impossible.

Claimant spoke to Ms. S. as much as twice per week consistently seeking updated from Ms. S. regarding her financial needs and changes in her life. Claimant, based on these conversations, explained the features and risks of the various investments available to Ms. S. Ms. S. elected to purchase BofA Preferred Stocks ("the BofA Stocks").

When the BofA Stocks were issued, Claimant again reviewed the risks of preferred stocks as well as the specific risks of BofA Stocks. Ms. S. liked the BofA Stocks because it met her investment objective and also because Ms. S. was quite familiar with the issuer.

At the time of Claimant's recommendations and to the best of her knowledge, Respondent and issuer was still one of the strongest banks in the country. There is simply no evidence that Claimant "misled" Ms. S. regarding the preferred equities. The fact that preferred equities subsequently declined is not indicative of any misleading statement on the part of Claimant as the world financial crisis and circumstances outside of Claimant's control led to the decline.

On April 17, 2009, after conducting a throughout investigation, Respondent denied the customer's complaint finding that Claimant did not mislead Ms. S. about the investments.

Furthermore, on August 25, 2017, Ms. S. sent an email supporting Claimant's request for expungement. Ms. S. chose not to attend the expungement hearing.

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

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

On July 25, 2017, Claimant provided notice that the customers in the Underlying Claims had been served with the Statement of Claim.

On August 07, 2017, the Arbitrator issued an order for the settlement documents in connection to Mr. G.'s complaint. On August 16, 2017, Claimant provided a copy of the settlement documents in connection to Mr. G.'s complaint.

On August 23, 2017, Claimant provided an Affidavit of Service regarding service of the Statement of Claim on the customers in the Underlying Claims.

On August 25, 2017, Claimant filed a copy of Ms. S.'s response to Claimant's expungement request stating that she did not and does not have a complaint regarding the services Claimant provided.

The Arbitrator conducted a recorded telephonic hearing on August 30, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. The customers in the Underlying Claims did not appear at the expungement hearing.

During the expungement hearing, the Arbitrator inquired if Claimant's counsel provided notice of the expungement hearing to each of the customers in the Underlying Claims, Claimant's counsel responded in the affirmative. Based on this testimony, the Arbitrator determined that the customers in the Underlying Claims had been properly served with the notice of the expungement hearing.

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

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the Underlying Claims.

The Arbitrator reviewed the settlement documents in connection to Mr. G.'s complaint and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant did not contribute to the settlement, and that the settlement agreement was not conditioned upon any customer's agreement not to oppose expungement.

The Arbitrator further affirms that no settlement documents exist as to Corporation H.'s and Ms. S.'s complaints, as the matters were not settled.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, Statement of Claim, Amended Statement of Answer, underlying customer Ms. S.'s written response to the expungement request and Claimant's oral testimony.

OTHER FEES: FINRA Office of Dispute Resolution has invoiced Respondent for the \$150.00 Member Surcharge.

FINRA 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.

Hearing Session Fees and Assessment

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) Hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: August 30, 2017 1 session

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

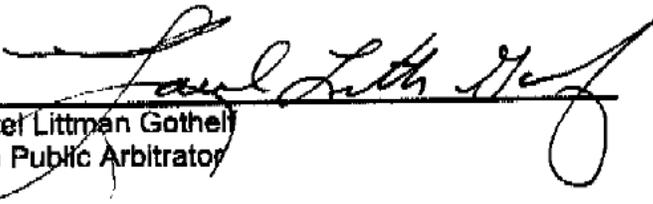
Laurel Littman Gothelf

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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



Laurel Littman Gothelf
Sole Public Arbitrator

9-8-17
Signature Date

September 8, 2017
Date of Service (For FINRA-ODR office use only)