

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Detroit, Michigan

Vestax Securities Corporation

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] (“Claimant”): Dochter Kennedy, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Vestax Securities Corporation (“Respondent”): David Smitham, Esq., Cetera Financial Group, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 25, 2016.
Claimant signed the Submission Agreement: October 25, 2016.

Statement of Answer filed on or about: August 1, 2017.
Respondent signed the Submission Agreement: August 3, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement. The cause of action related to Claimant’s allegation that information in an underlying customer complaint involving the sale of an American Skandia Marketing, Inc. Deferred Annuity should no longer appear in his registration records.

In the Statement of Answer, Respondent did not assert a position regarding Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of all references to Occurrence # [REDACTED] from his registration records maintained by the Central Registration Depository (“CRD”), compensatory damages of \$1.00, and all other appropriate relief.

In the Statement of Answer, Respondent requested a decision on Claimant's request for expungement, denial of Claimant's other requests for relief, that it be permitted to appear at the hearing by telephone, and the assessment of forum costs to Claimant.

On the record, during the hearing on expungement, the Arbitrator granted Respondent's oral request to Amend its Answer to include a request for \$750.00 in damages for reimbursement of counsel's pro hac vice fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimant requested that the expungement hearing in this matter be conducted by telephone or video in his letter dated January 20, 2017.

The Arbitrator conducted a recorded telephonic hearing on August 31, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement.

AWARD

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

1. [REDACTED] claims are denied in their entirety.
2. [REDACTED] request for expungement of his CRD records is denied.
3. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
4. Any and all claims for relief not specifically addressed herein 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, Vestax Securities Corporation 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(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: June 2, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: August 31, 2017 1 session

Total Hearing Session Fees = \$100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant [REDACTED]
[REDACTED]

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

ARBITRATOR

Gail K. Barski-McCracken - 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

/s/ Gail K. Barski-McCracken

Gail K. Barski-McCracken
Sole Public Arbitrator

09/08/17

Signature Date

09/08/17

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

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Gail K. Barski-McCracken

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Sole Public Arbitrator

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Gail K. Barski-McCracken
Sole Public Arbitrator

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