

**AWARD**  
FINRA Office of DISPUTE RESOLUTION

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CASE # [REDACTED]

[REDACTED] (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith Inc.  
(Respondent)

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**REPRESENTATION OF PARTIES:**

For Claimant [REDACTED] Armin Sarabi, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Randi P. Spallina, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

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**NATURE OF DISPUTE:** Associated Person vs. Member

Statement of Claim filed on or about: February 24, 2017.

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**CASE SUMMARY:** Claimant requested expungement of two customer complaints from his Central Registration Depository ("CRD") record: occurrence number [REDACTED] and occurrence number [REDACTED] ("Underlying Claims").

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**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 the 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) finding the claim, allegation or information is false.
4. An award of damages in the amount of \$1.00 for Respondent's 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, Respondent advised that while it does not oppose to Claimant's request for expungement, it provided the following affirmative and other defenses:

1. The Statement of Claim fails to state any claim for relief that may provide the basis of an award of damages to Claimant;
2. Claimant is precluded from an award of damages because Claimant has not suffered any damages or any legally recognizable injury and/or the damages Claimant seeks are speculative and uncertain; and,
3. Respondent reserves the right to amend its Answer and assert additional defenses insofar as Claimant's claims are clarified in the course of this proceeding or addition evidence is discovered.

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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] and [REDACTED] from Claimant [REDACTED] [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant Scott Daniel Hood 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 for each of the occurrence numbers:

a. Occurrence number [REDACTED]

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

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

For occurrence number [REDACTED] (in which "Mr. R" is the customer in the underlying claim), the Arbitrator has made the above Rule 2080 finding based on the following reasons:

Mr. R alleged that a particular investment resulted from the recommendation of an unsuitable security. Mr. R purchased this security years before Claimant became a broker. Claimant was not involved in the alleged investment related sales practice. Mr. R also alleged unauthorized trading in his account. There is no hint, much less evidence, of such unauthorized trading. This allegation is false and clearly erroneous.

b. Occurrence number [REDACTED]

The claim, allegation, or information is factually impossible or clearly erroneous; and,

The claim, allegation, or information is false.

For occurrence number [REDACTED] (in which "Ms. B" is the customer in the underlying claim), the Arbitrator has made the above Rule 2080 finding based on the following reasons:

Ms. B alleged that Claimant had misrepresented the principal guarantee on one security in her portfolio. The correspondence from Ms. B to Respondent suggests that Ms. B may not have understood "principal" in the context of the guarantee, but there is no evidence that Claimant misrepresented this or any other matter to Ms. B.

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

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

On August 8, 2017, Claimant provided notice that the customers in the Underlying Claims had been served with the Statement of Claim and notice of the expungement hearing.

On August 14, 2017, Claimant provided an Affidavit of Service regarding service of the Statement of Claim on the customers in the Underlying Claims.

On September 26, 2017, Claimant provided a copy of Claimant's BrokerCheck® Report.

The Arbitrator conducted a recorded telephonic hearing on October 3, 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, Claimant waived the request for \$1.00 in damages.

The Arbitrator determined that neither of the customer complaints being expunged were resolved by way of settlement.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Claims.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, Correspondence between Respondent and Ms. B, and Claimant's oral testimony.

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**OTHER FEES:** Respondent has paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

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) Pre-hearing session with a single arbitrator @ \$50.00/session	= \$50.00
Pre-hearing conference: July 10, 2017 1 session	
One (1) Hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 3, 2017 1 session	
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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**

Mark R. Lee

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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



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Mark R. Lee  
Sole Public Arbitrator



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Signature Date

October 13, 2017  
Date of Service (For FINRA-ODR office use only)