

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number:

vs.

Respondent

Hearing Site: Tampa, Florida

Citigroup Global Markets, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochter Kennedy, Esq. and Eric Litow, Esq.,
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc.: Kurt T. Kalberer, II, Esq., Bressler,
Amery & Ross, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 28, 2017.

[REDACTED] signed the Submission Agreement: February 28, 2017.

Amended Statement of Claim filed on or about: March 22, 2017.

Second Amended Statement of Claim filed on or about: April 19, 2017.

Statement of Answer filed by Respondent on or about: April 20, 2017.

Citigroup Global Markets, Inc. signed the Submission Agreement: April 18, 2017.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two customer complaints, Occurrence Nos. [REDACTED] and [REDACTED] which were recorded by Respondent on Claimant's CRD records.

In the Statement of Answer, Respondent denied any allegations of wrongdoing and stated it does not oppose the requested expungement relief.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested \$1.00 in compensatory damages, expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from his CRD records and any and all other relief deemed just and equitable by the

Arbitrator.

In the Statement of Answer, Respondent requested that no forum fees be assessed against Respondent and that all other fees associated with this matter be assessed solely against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

In accordance with the Arbitrator's directive dated June 28, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim, as amended, to the customers in the underlying complaints, and advised the customers of their right to participate in the expungement hearing scheduled for October 11, 2017. In response thereto, the deceased customer's POA in Occurrence No. [REDACTED] filed a submission in which he, among other things, contested Claimant's request, and which was reviewed by the Arbitrator.

The Arbitrator conducted a recorded telephonic hearing on October 11, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement. At the hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00. Respondent did participate in the expungement hearing and did not contest the request for expungement.

Neither of the underlying customers nor their counsel requested to participate in the recorded telephonic expungement hearing.

The Arbitrator reviewed the settlement documents with respect to Occurrence No. [REDACTED] considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the underlying customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

Respondent denied the underlying customer's complaint in connection with Occurrence No. [REDACTED]. Therefore, there was no settlement agreement for the Panel to review in connection with that occurrence.

The Arbitrator further noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; BrokerCheck® Report for Claimant; INSR Licensing Validation Result and Exchange Transfer Form - Part 3, April 30, 2009 memo and Citi Smith Barney interoffice memo dated March 27, 2009 (Exhibits 1, 3, 8 and 9 to the Second Amended Statement of Claim); testimony of Claimant; and Respondent's Report of Complaint Resolution Form and General Release for Customer, dated May 29, 2009.

The Arbitrator has provided an explanation of her decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, 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 references to Occurrence Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact as to both Occurrence Nos. [REDACTED] and [REDACTED]

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 findings based on the following reasons:

Occurrence No. [REDACTED]

Allegations by the customer's son that the purchases of variable annuities in February 2003 were unsuitable and that Claimant failed to follow the son's instructions to move the annuity funds into the annuity money markets were clearly erroneous and false. The annuities were suitable and accomplished the customer's goal of providing a death benefit for her son, and replaced some previously owned annuities that had provided the customer with lower returns than the new annuities. The son did not provide any documentation that he was authorized to make changes to the customer's accounts. Claimant was able to make changes to some of the customer's accounts after Claimant contacted the customer directly. For the other accounts, Claimant worked with the customer to obtain the newly required authorization letter for telephone transfer, and, after the letter was obtained, to follow the customer's directions to make the transfers to money markets.

Occurrence No. [REDACTED]

The customer's allegation of misrepresentation with respect to the variable annuity investment was clearly erroneous and false. Claimant relied on representations by Lincoln National Life Insurance Company and Respondent concerning the provisions

of the annuity, including the death benefit provision, in advising the customer and did not misrepresent the annuity provision (as Claimant understood it from Lincoln National's and Respondent's materials as well as his experience with the product) to the customer.

2. Any and all claims for relief not specifically addressed herein 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 a party, Respondent is assessed the following:

Member Surcharge = \$150.00

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision = \$200.00

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$200.00

The Arbitrator has assessed the total discovery-related motion fee of \$200.00 to Claimant.

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 28, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

ARBITRATOR


Gayle B. Carlson

-

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



Gayle B. Carlson
Sole Public Arbitrator



Signature Date

October 31, 2017

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