

AWARD
FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Ameriprise Financial Services, Inc. (Ameriprise) and The Prudential Insurance Company of America (Prudential)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Docthor Kennedy MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Ameriprise Financial Services, Inc.: Sydney Crowder, Esq., Ameriprise Financial, Minneapolis, Minnesota.

For Respondent The Prudential Insurance Company of America: Alan S. Brodherson, Esq., Law Office of Alan S. Brodherson, New York, New York.

NATURE OF DISPUTE: Associated Person vs. Members

Statement of Claim filed on or about: February 10, 2017.
Claimant signed the Submission Agreement: February 10, 2017.

Statement of Answer filed by Ameriprise on or about: March 28, 2017.
Ameriprise signed the Submission Agreement: March 28, 2017.

Statement of Answer filed by Prudential on or about: April 7, 2017
Prudential did not sign the Submission Agreement.

CASE SUMMARY: Claimant requested expungement of disclosures by Ameriprise of customer disputes relating to Occurrence Numbers [REDACTED] and [REDACTED] from his Central Registration Depository ("CRD") record. Claimant also requested expungement of disclosures by Prudential relating to Occurrence Numbers [REDACTED] and [REDACTED] for allegedly defaming Claimant on his Form U5. Regarding Claimant's Form U5, Claimant asserted causes of action for defamation and tortious interference with prospective economic advantage.

In its Answer, Ameriprise advised that it has no objection to the request for expungement of the information regarding the customer complaints so long as Claimant is able to establish an appropriate factual record at the hearing in this matter.

In its Answer, Prudential advised that, to the extent not expressly admitted, it denies each and every allegation of wrongdoing in the Statement of Claim.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation, or information is factually impossible and 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 Number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
 4. Expungement of the Form U5 Occurrence Number [REDACTED] and those relevant portions of the Form U4 from the Claimant's CRD record on the basis that the statements are defamatory in nature, to include amendment of the Reason for Termination entry in Section 3 of the Claimant's Form U5 to read "Voluntary," expungement of the "Yes" answer to Question 14J of the Claimant's Form U5, expungement of the affirmative answer to Item 15 of the Form U5, and expungement of the affirmative answer to Question 14J of the Form U4. Alternatively, if the Arbitrator is unwilling to change the reason for termination to "Voluntary" and grant full expungement, the Claimant requests that the Reason for Termination be amended to "Voluntary," and that the wording of the disclosure reporting page accompanying the Form U5 and the allegations portion and termination comment portion of his BrokerCheck® Report for this disclosure be changed to read: "The broker voluntarily left Prudential to pursue an offer at another firm.";
 5. Damages in the amount of \$1.00 from Ameriprise and Prudential for their part in contributing to Claimant's injury; and
 6. Any and all other relief that the Arbitrator deems just and equitable.

In its Answer, Ameriprise requested:

1. An award that recommends expungement of the subject customer complaints from Claimant's CRD record in the event that Claimant is able to bear his burden of proof in accordance with FINRA Rule 2080 and FINRA Code of Arbitration Procedure ("Code") Rule 13805;
2. An award that denies any and all requested damages against Ameriprise; and
3. An award that assesses all costs, forum fees and member surcharges incurred by Ameriprise, whatsoever relating to this arbitration, against Claimant.

In its Answer, Prudential requested that the Arbitrator deny Claimant's request for \$1.00 in damages and, pursuant to Code Rule 13805(d), assess against Claimant all forum fees for the hearing session in this matter.

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

Prudential did not file with FINRA Office of Dispute Resolution ("ODR") a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim and appeared at the expungement hearing, is bound by the determination of the Arbitrator on all issues submitted.

In Prudential's Answer, it took no position regarding Claimant's request for expungement.

In the Initial Pre-Hearing Conference Scheduling Order dated May 22, 2017, the Arbitrator stated that Claimant is to notice each client whose complaint is to be addressed during the expungement hearing.

On June 20, 2017, Claimant filed copies of correspondence sent to both Mr. T (underlying customer regarding Occurrence Number [REDACTED]), and Mr. and Mrs. C (underlying customers regarding Occurrence Number [REDACTED]), via U.S. Postal Service Certified Mail Receipt that contained the following: a copy of the Case Information Sheet, including the scheduled hearing date; the Initial Pre-Hearing Conference Scheduling Order; and Statement of Claim dated February 10, 2017. The correspondence also advised Mr. T, and Mr. and Mrs. C, of their right to participate in the hearing or submit written documentation.

The Arbitrator noted that the Statement of Claim, among other documents, were delivered to Mr. T and Mr. and Mrs. C, and they each choose not to participate.

The Arbitrator conducted the recorded telephonic hearing on October 24, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. Prudential participated in the expungement hearing, and advised that it did not join in or oppose Claimant's expungement request. Ameriprise participated in the expungement hearing and stated that it does not object to Claimant's expungement request as long as the Arbitrator determines Claimant has met his burden of proof. As stated earlier, neither Mr. T, nor Mr. and Mrs. C participated in the expungement hearing.

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

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator notes that there was no settlement agreement entered into between the Claimant and Ameriprise and Mr. and Mrs. C. The Arbitrator notes that Mr. T's complaint involved a settlement of a class action lawsuit by Ameriprise. The Arbitrator reviewed the Stipulation of Settlement and the Final Order and Judgment Approving Class Action Settlement and Dismissing Complaint, considered the amount of the class action settlement, and considered other relevant terms and conditions of settlement. The Arbitrator noted that the settlement was not conditioned on Mr. T not opposing the request for expungement. Also the Arbitrator noted that Claimant was not a party to the class action, and did not contribute to the class action settlement amount.

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

In recommending expungement for Occurrence Numbers [REDACTED] and [REDACTED], the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony wherein Claimant restated the facts presented in the Statement of Claim which supported his request for expungement; that Ameriprise and Prudential did not challenge Claimant's testimony, nor present an opening statement, testimony or evidence contradicting Claimant's testimony; and that Claimant's BrokerCheck® Report did not indicate any other actions on Claimant's CRD record.

AWARD: After considering the pleadings, the testimony and evidence presented at the October 24, 2017 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 Numbers [REDACTED] and [REDACTED] from [REDACTED] (CRD # [REDACTED]) registration records maintained by the 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 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: 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.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: With regard to Occurrence Number [REDACTED], Claimant was the branch manager supervising the Financial Advisor who had Mr. T as her client. Claimant was not involved in the explanation or solicitation of the product at issue with the client. The Claimant was therefore not the registered person involved in the alleged investment-related sales violation.

With regard to Occurrence Number [REDACTED], Claimant was the Financial Advisor for this client, but assigned the client to another Financial Advisor when he was promoted to branch manager. The complaint is based on a product solicited by the then-current Financial Advisor that met the client's profile. During succeeding years, the product lost a portion of its market value. The Claimant was not the registered person involved in the alleged investment-related sales practice violation.

2. The Arbitrator recommends the expungement of all references to Occurrence Numbers [REDACTED] and [REDACTED] of [REDACTED] (CRD # [REDACTED]) filed by The Prudential Insurance Company of America and maintained by CRD. The Reason for Termination shall be changed to "Voluntary," and the Termination Explanation shall be expunged in its entirety with no replacement language.

The Arbitrator is making these recommendations based on the defamatory nature of the information. These recommendations shall apply to all subsequent disclosures concerning this event. The registration records are not automatically amended to include the changes indicated above. [REDACTED] must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

3. All other relief requests are denied.

OTHER 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 parties, Ameriprise and Prudential are assessed the following:

Ameriprise
Member Surcharge = \$ 150.00

Prudential
Member Surcharge = \$ 150.00

Hearing Session Fees and Assessments

The Panel 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: May 22, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: October 24, 2017 1 session

Total Hearing Session Fees = \$ 100.00

1. The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.
2. The Arbitrator has assessed \$25.00 of the hearing session fees jointly and severally to Ameriprise and Prudential.

ARBITRATOR

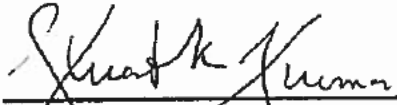
Stuart K. Furman

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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



Stuart K. Furman
Sole Public Arbitrator

11-10-17

Signature Date

November 14, 2017
Date of Service (For FINRA-ODR office use only)