

AWARD
FINRA Office of DISPUTE RESOLUTION

CASE #

("Claimant") vs. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Respondent")

REPRESENTATION OF PARTIES:

For Claimant Dochter Kennedy, MBA, J.D., and Eric Litow, Esq., Advisor Law, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: May 31, 2017.

Statement of Answer filed on or about: July 31, 2017.

CASE SUMMARY: Claimant requested expungement of all references to customer dispute occurrence number (the "Underlying Claim") from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent stated that it does not oppose Claimant's expungement request and asserted various affirmative and other defenses.

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

1. Expungement of the Underlying Claim 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 the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(B), as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages, and did not include any separate relief requests.

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

On August 18, 2017, Claimant filed a copy of correspondence sent to the customer in the Underlying Claim by Certified Mail. The correspondence included a copy of the Statement of Claim and advised the customer that although he is not required, nor under a duty to do so, he may participate in this hearing or submit written documentation.

Claimant filed a sworn Affidavit of Service dated August 22, 2017. In the Affidavit, the affiant stated that copies of the Statement of Claim were served on the customer by Certified Mail.

On October 19, 2017, Claimant filed a copy of follow-up correspondence sent to the customer in the Underlying Claim via electronic mail. In the correspondence, Claimant advised that he was following-up due to a Return to Sender notice he received. Claimant also included a Notice of Expungement Request including a copy of the Statement of Claim, a copy of the August 18, 2017 service letter, and provided notice of the November 2, 2017 expungement hearing. Claimant also advised the customer that although he is not required nor under a duty to do so, he may participate in the hearing or submit written documentation, if he wished to do so. The Arbitrator accepted this as notice to the customer of the request for expungement and notice of the hearing. The customer did not submit a response.

On October 27, 2017, Claimant filed a Submission of Expungement Hearing Exhibits and an Amended First Submission of Expungement Hearing Exhibits. Respondent did not submit a response.

The Arbitrator conducted a recorded telephonic hearing on November 2, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and did not object to Claimant's expungement request. The customer did not appear at the hearing.

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

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

The Arbitrator reviewed the Important Notice about the Merrill Lynch Auction Rate Securities Program and its Offer to Purchase for Cash at Par Eligible Auction Rate Securities ("Buy-Back Agreement") and found that it was the only settlement agreement in the Underlying Claim. The Arbitrator found that there is no separate or other settlement agreement with Claimant, nor did Claimant participate in or pay any money in connection with the Buy-Back Agreement. The Arbitrator considered the amount of payment made to the customer and considered any other terms and conditions of settlement, and stated that he also considered the fact that the Buy-Back Agreement, pursuant to the FINRA settlement, made the customer whole. The Arbitrator further noted that the settlement was not conditioned on the customer not opposing Claimant's expungement request.

In recommending expungement the Arbitrator reviewed and relied upon the following documentary or other evidence: exhibit 18 Buy-Back Agreement; exhibit 8 Respondent's communication with the customer; exhibit 12 Respondent's Auction Market Value Sheet, Back to Basics in the Auction Market; and exhibit 16 Respondent's additional communication with the customer. The Arbitrator noted that Claimant's exhibits covered the time from the initial purchase of the auction rate securities ("ARS") by the customer

through the developments in the market, the FINRA settlement and the Buy-Back Agreement, and included a proof of service of notice to the customer of this expungement hearing.

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 occurrence number [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 the Code of Arbitration Procedure ("Code") Rule 13805, the Arbitrator has made the following Rule 2080 affirmative findings of fact: 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: It is clear that Claimant did not mislead or misrepresent the ARS offered by Respondent to the customer thus the claim is clearly erroneous and is also false. Based upon Claimant's testimony and documentary evidence, it is clear that Claimant and the customer communicated often and clearly about the circumstances that developed in the ARS market, and that the customer was made whole by Respondent's Buy-Back Agreement which was the only settlement agreement in this case.

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

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: September 20, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: November 2, 2017 1 session

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

Robert D. Sussin

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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



Robert D. Sussin
Sole Public Arbitrator

11 / 14 / 2017
Signature Date

November 15, 2017
Date of Service (For FINRA-ODR office use only)