

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

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

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Dochter Kennedy, J.D., MBA and Armin Sarabi, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

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

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: April 12, 2017.

Statement of Answer filed by Respondent on or about: June 12, 2017.

CASE SUMMARY: Claimant asserted a claim seeking expungement of customer complaint occurrence number [REDACTED] ("Underlying Complaint") from his Central Registration Depository ("CRD") records.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses and objected to Claimant's request for monetary damages or any relief beyond expungement. Respondent did not oppose Claimant's request for expungement and advised that Respondent did not intend to participate in the final hearing on this matter.

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

1. Expungement of the Underlying Complaint 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 Complaint from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Compensatory damages in the amount of \$1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

Respondent did not include any separate relief requests in its Statement of Answer.

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

On August 9, 2017, Claimant sent notice to the customer in the Underlying Complaint ("Mr. L") by certified mail, which included a copy of the Statement of Claim, formal notice of the expungement hearing and notice to Mr. L of his ability to participate in the expungement hearing or to submit written documentation.

On August 14, 2017, Claimant provided an Affidavit of Service regarding service of the Statement of Claim on Mr. L.

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 appeared at the expungement hearing and took no position as to Claimant's request for expungement. Mr. L did not respond to Claimant's letter and did not participate in the expungement hearing.

At the hearing, Claimant withdrew his request for \$1.00 in monetary damages from Respondent without objection. The Arbitrator granted this request.

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

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Statement of Answer; Exhibits 1-5 which were admitted into evidence including Claimant's BrokerCheck® Report; a Wikipedia page on "Subprime mortgage crisis"; an Investopedia page on "Taper Tantrum"; Mr. L's email complaint to Claimant dated June 24, 2013; Respondent's Letter to Mr. L dated July 8, 2013; and the testimony of Claimant.

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 Claimant [REDACTED] (CRD # [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant [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 of Arbitration Procedure, 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 finding based on the following reasons:

Claimant conclusively established at the hearing that Mr. L's allegations that Claimant made misrepresentations from February to June 2013 regarding Mr. L's investments were clearly erroneous, factually impossible, and false because: 1) Mr. L had over 25 years of investment experience; and 2) Claimant presented the risks associated with the bond investments, including providing Mr. L with documents that expressly detailed the risks associated with the investment.

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

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

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.

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: July 31, 2017 1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 2, 2017 1 session	
<hr/>	
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

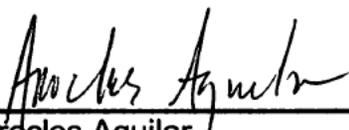
Arocles Aguilar

-

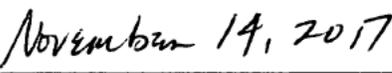
Sole Public Arbitrator

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



Arocles Aguilar
Sole Public Arbitrator



Signature Date

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