

**Award  
FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Deutsche Bank Securities, Inc.

Hearing Site: Baltimore, Maryland

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent Deutsche Bank Securities, Inc.: Christopher Donati, Esq., Paduano &  
Weintraub LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: February 20, 2017.

[REDACTED] signed the Submission Agreement: February 20, 2017.

Statement of Answer filed by Respondent on or about: April 14, 2017.

Deutsche Bank Securities, Inc. signed the Submission Agreement: April 14, 2017.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two (2) customer complaints, Occurrence Numbers [REDACTED] (involving Customer A) and [REDACTED] (involving Customer B), hereinafter collectively referred to as (the "Occurrences"), which were recorded on Claimant's CRD records by Respondent.

Unless specifically admitted in the Statement of Answer, Respondent did not view the Statement of Claim as alleging any wrongdoing on the part of Respondent, and advised that it would take no position on Claimant's request for expungement as long as Claimant's request for compensatory damages in the amount of \$1.00 was withdrawn.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of the Occurrences from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous; expungement of the Occurrences from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim,

allegation, or information is false; an award of compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny any request for compensatory damages and any other relief against Respondent.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about August 9 and 14, 2017, Claimant filed with FINRA Office of Dispute Resolution copies of letters sent to Customers A and B enclosing the Statement of Claim and Affidavit of Service, notice of the date and time for the expungement hearing scheduled in this matter, and notice of their right to participate therein.

The Arbitrator conducted a recorded telephonic hearing on October 27, 2017, so the parties and the customers could present oral argument and evidence on Claimant's request for expungement. Respondent attended the expungement hearing and did not oppose Claimant's request for expungement. Neither Customer A nor Customer B participated in the expungement hearing, and they did not contest Claimant's request for expungement.

During the October 27, 2017, recorded telephonic hearing on expungement, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

The Arbitrator reviewed the BrokerCheck® report for Claimant and the settlement/repurchase documents for the Occurrences, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements/repurchases. The Arbitrator noted that the settlements/repurchases were not conditioned on Customers A or B not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement/repurchase amounts.

The Arbitrator 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; witness testimony of both Claimant and Claimant's colleague who also managed Customer A's account; and all of the exhibits. The Arbitrator reviewed and considered the terms of the "Acceptance of Repurchase Offer" made to Customer A by Respondent, and Customer A's acceptance of Respondent's offer.

The specific testimony relied upon concerned: the relationship between Claimant and his customers; the illiquidity of the market in 2008; the decline of the auction rate securities ("ARS") market; and efforts made by the regulators and firms to work with clients who had invested in the ARS market in an effort to ensure that clients were made whole.

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 Numbers [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED] (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:

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:

The Arbitrator found that Customer A's claim that "the purchase of ARS for his account was unsuitable due to recent liquidity issues in the ARSs market" is factually impossible and clearly erroneous and meets both the FINRA Rule 2080(b)(1)(A) standard and the FINRA Rule 2080(b)(1)(C) standard. This finding is based on the exhibits and testimony of both witnesses that the determination of the suitability of ARS for Customer A's stated investment objectives occurred in approximately 2007, prior to any "liquidity issues in the ARS market. This finding is also based on the exhibits and witness testimony of Claimant and Claimant's colleague who also managed Customer A's account regarding the decline of the ARS market in February 2008. At the time that the ARS were purchased, the ARS had high liquidity. The decline and resulting illiquidity of ARS was unexpected and unprecedented. The evidence and witness testimony supports the Arbitrator's finding that the failure of the ARS was a result of failed auctions and did not indicate a poor or unsuitable recommendation by Claimant.

With regard to Customer B, ARS in 2008 failed and became illiquid as a result of the investor banks' decision to stop supporting the ARS market and the supply of ARS being sold exceeded the demand. Consequently, Respondent had repurchased the ARS owned by Customer B's personal account, but denied his request that they

repurchase his corporate-owned ARS, and no further action was pursued by either party. Customer B's allegation that he was unaware of Respondent's purchase of corporate ARS is factually impossible and clearly erroneous, because Customer B had owned ARS for years prior to their illiquidity in 2008. Customer B's corporate ARS performed well and were accepted by Customer B for years, until they became illiquid. At that point, Customer B sought liquidity of the corporate-owned ARS which were not a part of the global settlement. The Arbitrator found that these allegations were false. The claim, therefore, meets both the FINRA Rule 2080(b)(1)(A) standard and the FINRA Rule 2080(b)(1)(C) standard for expungement.

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
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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
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#### **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
Hearing Date: October 27, 2017	1 session	

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Total Hearing Session Fees	= \$	100.00
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The Arbitrator has assessed the total hearing session fees of \$100.00 to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

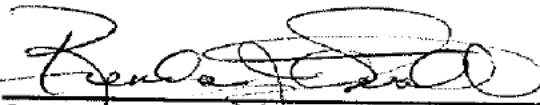
Brenda J. Stovall

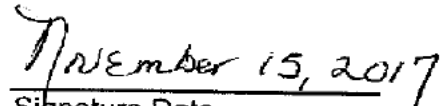
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Sole Public Arbitrator

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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Brenda J. Stovall  
Sole Public Arbitrator

  
\_\_\_\_\_  
Signature Date

NOVEMBER 15, 2017

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