

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Wilmington, Delaware

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Dochter Kennedy, AdvisorLaw LLC, Broomfield, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: February 14, 2017.

████████████████████ signed the Submission Agreement: February 14, 2017.

Statement of Answer filed by Respondents on or about: April 7, 2017.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: April 7, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the following:

1. expungement of the occurrences from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information is factually impossible and clearly erroneous.
2. expungement of occurrence number ██████████ 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.

3. expungement of the occurrences from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information is false.
4. an award of damages in the amount of \$1.00 from the Respondent for their part in contributing to the Claimant's injury; and
5. any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not oppose Claimant's request for expungement, but objected to Claimant's request for one dollar in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

By letter dated May 30, 2017, Claimant notified the customer related to occurrence # [REDACTED] of the expungement request and of his right to participate and testify at the expungement hearing and he provided the customer with a copy of the Statement of Claim.

By letter dated May 30, 2017, Claimant provided the Office of Dispute Resolution with the obituaries of the customers related to occurrence [REDACTED] and occurrence [REDACTED].

The Arbitrator conducted a recorded telephonic expungement hearing on October 16, 2017 so the parties could present oral argument and evidence on [REDACTED] request for expungement of his CRD records.

The customers related to occurrence # [REDACTED] did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]. The settlement document related to occurrence # [REDACTED] could not be located, given the passage of time. Nevertheless, [REDACTED] testified that he did not contribute to the settlement amount and that that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator found [REDACTED] testimony credible.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim and exhibits, Claimant's BrokerCheck® Report, and the written evidence and testimony presented at the expungement hearing.

The Arbitrator noted that [REDACTED] did not previously file claims requesting expungement of the same disclosures in the CRD.

AWARD

After considering the pleadings, the testimony and evidence presented at the telephonic expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to occurrence # [REDACTED] from registration records maintained by the Central Registration Depository ("CRD") for [REDACTED] (CRD# [REDACTED]), 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 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:

In this matter, the customer claimed that the sale of a certain portion of a position in Arco common stock and the purchase of a limited partnership and utility preferred were inappropriate or unsuitable. It appears from the evidence that the customers had a significant overconcentration in Arco stock as a result of her late husband's employment with that company, which is not atypical. At their initial meeting and thereafter, [REDACTED] recommended a strategy of diversifying her portfolio away from Arco by selling a portion of the position and purchasing alternative investments which were entirely appropriate given her age, risk tolerance and investment income objectives. He reviewed the risks, disclosures and benefits of each, and the customer in 1984 purchased an Atlantic City Electric Utility Preferred and a real estate limited partnership. These investments performed up to expectations, although a change in tax laws affected somewhat the returns on the limited partnership. Together, these investments made up around 25% of her portfolio. The customer made a claim for \$49,000 in 1990, which was settled by the firm for \$15,000 in order to avoid the cost and expense of defense. She remained a client for several years thereafter. [REDACTED] did not contribute to the settlement, which he testified was not conditioned on consent to expungement. After a search, the settlement agreement could not be located and, given the passage of time, was probably removed from Merrill's files. The customer died in 2015.

3. The Arbitrator recommends the expungement of all references to occurrence # [REDACTED] from registration records maintained by the Central Registration Depository ("CRD") for [REDACTED] (CRD# [REDACTED]), 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 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:

In this claim, the customer asserted that [REDACTED] misrepresented the characteristics of a Merrill Lynch Unlimited Advantage Account ("MLUA") opened by him in or about 2000. A key feature of a MLUA account is its fee structure- the customer pays a flat 1% with no commissions on trading activities. As such, it is designed not for short-term or high-frequency traders but for investors whose strategies are long-term and who do not require a high level of customer service and interaction with a financial representative. [REDACTED] testified that he reviewed the terms and conditions of the MLUA account structure with the customer in detail. Shortly after the account was opened, however, the customer began to demand a much higher level of service not ordinarily contemplated in a MLUA, such as frequent requests for research analysis, investment advice, and portfolio reviews. The customer complaint that he was somehow misled as to what he reasonably could expect from a MLUA was found to be without merit but, as a gesture to the customer, a portion of his MLUA fees to the extent of \$1,500 was credited to his account. The customer received notice of this application and did not participate.

4. The Arbitrator recommends the expungement of all references to occurrence # [REDACTED] from registration records maintained by the Central Registration Depository ("CRD") for [REDACTED] (CRD# [REDACTED]), 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 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:

In this claim, the customer alleged the unsuitability of a closed end equity fund he had purchased through [REDACTED] in 2006. At the time of the investment, the customer was an experienced investor with a moderate risk profile and an interest in growth and income. [REDACTED] discussed a variety of options with him to diversify his portfolio, including closed end equity funds, certification of deposits and fixed income products. These products fitted the customer's risk tolerance and investment objectives, and, given his extensive experience with equities, he was comfortable with the closed end equity option which he eventually purchased after all requisite disclosures were made. The position was approximately 25% of his portfolio. Before he transferred his account to another investment representative closer to his home, the customer did not voice any complaint concerning his purchase. In 2007, having experienced a market decline in the fund, the customer complained that the investment was unsuitable and asked for some \$11,000 in compensation. The complaint was investigated by the firm and denied in 2009. The customer took no further action before his death in 2012.

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

FEES

Pursuant to the Code of Arbitration Procedure, 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith Inc., is assessed the following:

Member Surcharge	= \$ 150.00
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ARBITRATOR

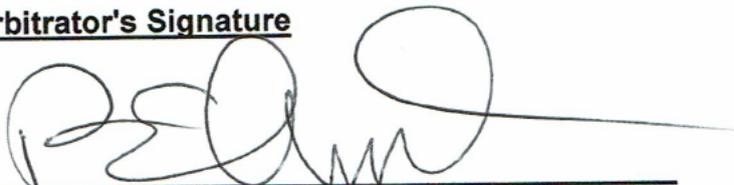
Robert E. Anderson

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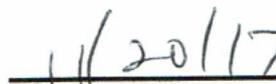
Sole Public Arbitrator

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 E. Anderson
Sole Public Arbitrator



Signature Date

November 27, 2017

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