

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Questar Capital Corporation (Respondent)

REPRESENTATION OF PARTIES:

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

For Respondent Questar Capital Corporation: Jeffrey D. Hedlund, Esq., Faegre Baker Daniels, Minneapolis, Minnesota.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on: February 16, 2017.

Statement of Answer filed by Respondent on: May 8, 2017.

CASE SUMMARY: Claimant asserted a claim seeking expungement of a civil class action complaint, occurrence number [REDACTED] ("Class Action") 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 and denied that Claimant is entitled to any monetary relief from Respondent but stated that Respondent does not oppose Claimant's request for expungement.

RELIEF REQUESTED:

In the Statement of Claim, Claimant requested:

1. Expungement of the Class Action 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 the Class Action 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 the Class Action from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. If the Arbitrator chooses not to award expungement of the Class Action, Claimant requests amendment of the information included in Claimant's BrokerCheck Report and BrokerCheck Individual Snapshot Report for occurrence number [REDACTED], number 11 B. "Your Contribution Amount" from \$12,819.00 to \$0;
5. Compensatory damages in the amount of \$1.00; and
6. Any and all other relief that the Arbitrator deems just and equitable.

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

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

On June 15, 2017, the Arbitrator ordered Claimant's counsel to consult with counsel for the plaintiff in the Class Action ("Mr. S") and request a letter from said counsel as to whether Mr. S will make an appearance and/or give testimony during the final hearing. The Arbitrator further ordered Claimant's counsel to advise Mr. S's counsel that Mr. S may participate in and testify during the final hearing, submit documents and evidence, cross-examine witnesses, and present opening and closing statements. Additionally, the Arbitrator ordered Claimant's counsel to serve said Mr. S's counsel with a copy of the June 15, 2017 order by mail and provide proof of service to FINRA Dispute Resolution.

On June 22, 2017, Claimant submitted notice that he had served Mr. S's counsel with a copy of the Statement of Claim and June 15, 2017 order.

On June 28, 2017, Claimant submitted a letter of the same date from counsel for the plaintiffs in the Class Action, advising that the Class Action was based on the sales of a security without proper due diligence on the part of the named defendants in the Class Action and Claimant was not a party to the Class Action and his conduct was not at issue in the Class Action. Counsel further advised that plaintiffs in the Class Action take no position on Claimant's request for expungement and would not be participating in the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on October 17, 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 contest the request for expungement.

During the expungement hearing, Claimant withdrew his claim for recovery of damages against Respondent.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents for the Class Action. The Arbitrator found that Claimant was not a party to the Class Action nor was he named as a responsible person and that Claimant did not contribute to the settlement amount. The Arbitrator also considered the amount of payments made to any party and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Mr. S not opposing the request for expungement.

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: class action complaint filed by Mr. S, on his own and on behalf of those similarly situated vs. Questar Capital Corporation, Yorktown Financial Companies, Inc., and Allianz Life Insurance Companies of North America on October 18, 2012 ("Class Action Complaint"); BrokerCheck® Report for Claimant; Forms U4 and U5 for Claimant; and testimony of Claimant. The Arbitrator also relied upon the following, hereinafter

collectively referred to as “Articles”: an IdahoStatesman.com article “Investor lawsuit against DBSI claims fraud” dated November 1, 2008; a Dimond Kaplan & Rothstein, P.A. blog post on “Regulators Accuse DBSI of Securities Fraud” dated August 18, 2009; a Fox Rothschild LLP page on “A Closer Look at the DBSI Bankruptcy” dated November 12, 2008; and a webpage from The United States Attorney’s Office District of Idaho website on “DBSI Founders Douglas L. Swenson and Mark A. Ellison Sentenced for Defrauding Thousands of Investors” dated August 20, 2014, hereinafter collectively “Articles”.

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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant seeks expungement of the claim made by his client Mr. S, against Questar Capital Corporation in the Class Action Complaint. Claimant was not named as a party or as a responsible person in the Class Action. Rather, in the Class Action Complaint Mr. S alleged that Questar Capital Corporation “. . . failed to disclose to its brokers, customers like [Mr. S], and the putative class members that Questar was selling securities that it knew or . . . should have known were part and parcel of a Ponzi scheme.” (Emphasis added, Class Action Complaint ¶ 28). In the Class Action, Mr. S further alleged numerous failures by Questar Capital Corporation and, importantly, did not allege any operative act or omission attributable to Claimant (see e.g. Class Action Complaint ¶¶ 32, 33, and 34-40). Claimant’s testimony confirmed that he was not involved in any of the allegations of omissions and false statements alleged in the Class Action.

Claimant confirmed in his testimony that he did not participate in the Class Action, was not named as a party, and did not pay anything towards the settlement of the Class Action. Questar Capital Corporation approved the investment at issue, at least implying that it had done due diligence in approving the security.

Claimant's BrokerCheck® Report at page 9 reflects that Claimant individually contributed \$12,819.00 towards the settlement of the Class Action. That statement is false and plainly harmful to Claimant's professional reputation; it is at best misleading; and provides no meaningful investor protection or regulatory value. Moreover, Claimant's BrokerCheck® Report is also misleading in that it erroneously implies that Mr. S made allegations of misconduct against Claimant in the Class Action complaint and no such allegations were made by Mr. S.

The import of disclosures on Claimant's Form U4 and U5 is that Mr. S's Class Action made allegations against Claimant of negligence, negligent misrepresentation and inadequate due diligence (Claimant's Form U4 at page 2, ¶ 4) and that Claimant ". . . was *involved* in one or more *sales practice violations* . . ." (Italics in original, Claimant's Form U5 at page 4, ¶ 4). In the view of the undersigned these assertions are factually erroneous, misleading and unfairly harmful to Claimant's professional reputation with no meaningful investor protection or regulatory value.

Documents attached to Claimant's Statement of Claim, particularly the Articles, reveal substantial misconduct by the principals of the issuer of the securities which were the subject matter of the Class Action. The settlement of the Class Action does not signify anything as to the merits of Mr. S's claims against Questar Capital Corporation (settlements are frequently made to avoid protracted, expensive litigation). However, the Class Action Complaint and the Articles reveal that no one in fact asserted that Claimant was in any way responsible for or involved in any act or omission which resulted in Mr. S pursuing the Class Action or settlement of that case.

Accordingly, the undersigned finds as a matter of fact that that statements in Claimant's BrokerCheck® Report and Claimant's Form U4 and Form U5 filings as to Mr. S' Class Action are clearly erroneous as to Claimant (as explained above) and further that Claimant was not involved in any investment-related sale practice violations which were alleged in the Class Action. Accordingly, all references to the Class Action should be expunged from Claimant's BrokerCheck® Report and Claimants Form U4 and Form U5 filings on the grounds of FINRA Rule 2080(b)(1)(A) & (B).

2. All other relief requests 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) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 17, 2017 1 session	

Total Hearing Session Fees	= \$50.00
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The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.

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

ARBITRATOR

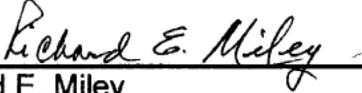
Richard E. Miley

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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



Richard E. Miley
Sole Public Arbitrator

11/20/2017
Signature Date

November 21, 2017
Date of Service (For FINRA-ODR office use only)

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