

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Geneos Wealth Management, Inc.  
Securities America, Inc.

Hearing Site: Miami, Florida

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy, Esq. and Owen Harnett, Esq.,  
AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Geneos Wealth Management, Inc. ("Geneos"): Michelle M. Atlas, Esq.,  
Geneos Wealth Management, Inc., Centennial, Colorado.

For Respondent Securities America, Inc. ("SAI"): Christina Heller, Esq., Securities  
America, Inc., Lavista, Nebraska.

**CASE INFORMATION**

Statement of Claim filed on or about: May 15, 2017.

████████████████████ signed the Submission Agreement: May 15, 2017.

Statement of Answer filed by Respondent SAI on or about: July 5, 2017.

Securities America, Inc. signed the Submission Agreement: June 30, 2017.

Amended Statement of Claim filed on or about: July 11, 2017.

Statement of Answer filed by Respondent Geneos on or about: July 18, 2017.

Geneos Wealth Management, Inc. signed the Submission Agreement: July 19, 2017.

**CASE SUMMARY**

In the Statement of Claim, as amended, Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two customer complaints, Occurrence Nos. ██████████ and ██████████, which were recorded on Claimant's CRD records by Respondents Geneos and SAI, respectively.

In its Statement of Answer, Respondent SAI stated that it did not contest this action and stipulated to the expungement request.

In its Statement of Answer, Respondent Geneos did not object to the relief requested by Claimant in the Statement of Claim, as amended.

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimant requested expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from his CRD records; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deemed just and equitable.

At the expungement hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

In its Statements of Answer, Respondent Geneos did not delineate a relief request.

In its Statement of Answer, Respondent SAI requested that Claimant's request for damages be denied.

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

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

In compliance with the Chair's Order dated August 28, 2017, Claimant provided notice of this proceeding to the underlying customers in Occurrence Nos. [REDACTED] and [REDACTED]. Neither customer elected to appear in person or telephonically, neither provided any written objection to the requested expungement.

The Arbitrator conducted a recorded in-person expungement hearing on December 1, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement. Claimant appeared in-person and his counsel appeared via videoconference. Respondents both appeared via videoconference and neither contested the request for expungement nor the facts presented at the expungement hearing.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD and that neither of said disputes resulted in a settlement nor an arbitration.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: BrokerCheck® Report for Claimant; Claimant's Statement of Claim and Amended Statement of Claim; Respondents' Statements of Answer; Claimant's exhibits; and Claimant's and Respondents' testimony presented at the recorded expungement hearing.

The Arbitrator has provided an explanation of his 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 in-person expungement 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 Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant (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.

Overall, the Arbitrator found Claimant's testimony truthful and credible. Respondents each had counsel participate and each had the opportunity to question Claimant's testimony. Respondents raised no objections or challenges to Claimant's in-person testimony.

In reaching his decision, the Arbitrator reviewed a substantial number of documents which supported Claimant's testimony. Claimant was deemed by the Arbitrator to have a strong grip on the underlying facts and of his involvement, and provided credible testimony. Critical facts regarding the underlying facts in connection with Occurrence Nos. [REDACTED] and [REDACTED] were not contradicted by Respondents' counsel. Furthermore, Claimant's prior and current employer, Respondents, which also have a duty to protect the investing public and the firms' customers from improper, fraudulent or otherwise culpable conduct of its Financial Advisors ("FA"), support Claimant's position.

### **As to Occurrence Number [REDACTED]**

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:

Claimant began his relationship with the customer in September 1994. It was jointly determined that customer's investment objective was long-term growth with a moderate risk tolerance. Over the years and based on the customer's ongoing health issues, the customer wanted his investments tied up for retirement so that neither he nor his wife would easily spend it. In 2001, as a result of personal debt

issues and overall poor market conditions, the customer started to move into mutual funds and annuities. From that point forward, Claimant reviewed the differences between the annuities with the customer.

In 2013, with the customer's failing health, death benefits and the long-term care rider provided by the Protective Life L Series annuity (Protective) were important to him.

Based on emails and a document jointly signed by Claimant and customer on January 28, 2013, prior to the purchase, it is uncontroverted that the customer was fully aware of the consequences of his decision to move his Prudential annuity to a Protective L Series annuity, including the compensation to Claimant.

The purchased annuity contained a provision that if the invested subaccount at Protective moved below a 12-month moving average, the funds in that subaccount would be moved into a money market fund. Eventually, the customer took umbrage with this condition. This provision was fully explained to the customer and he signed a document wherein this provision and its consequences were fully disclosed.

Respondent Geneos reviewed the allegations of the customer and determined that the customer was fully aware of the monetary penalties imposed if he chooses to liquidate his investment(s) and that the investments purchased were suitable.

The Arbitrator also found that the investment was suitable for the customer, based on the information available to Claimant at the time. Over the course of the customer's relationship with Claimant, he earned over \$200,000.00.

**As to Occurrence Number [REDACTED]:**

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 2002, a second customer, who was in the process of getting a divorce, became a client of Claimant. During the following five years, they discussed the customer's options for his upcoming retirement. In 2011, the customer requested that Claimant find him a different annuity than the Pacific Life three-year annuity ("Life Annuity") which was purchased in 2007. Claimant recommended a Prudential annuity ("Guarantee Annuity") which would provide a guarantee that would give the customer an income for life. This annuity also contained provisions for moving to a bond position in the event of a rapidly declining market.

Prior to the purchase of the Guarantee Annuity, on February 15, 2011, the customer signed a document which set forth the details of the proposed transactions and the consequences thereof. Additionally, the customer signed a Variable Annuity Purchase Acknowledgement wherein he acknowledged: the unique features of the variable annuity; that the features were explained to him; and that he received and reviewed the prospectus for the proposed investment.

The customer alleged that he was not aware that by receiving the six percent bonus for purchasing the Guarantee Annuity, that he had locked in the account for ten years and that Claimant misrepresented the living benefit rider investment on his variable annuity. Claimant and the customer jointly signed a document on February 15, 2011, which clearly discloses the surrender and the lockup provisions, as well as, permitted withdrawals. Further, the disputed issues were disclosed in the Variable Annuity Purchase Acknowledgement signed by the customer on February 15, 2011.

Respondent Securities America, Inc., in its Answer, states its belief that in each instance, "the claim, allegation or information is false."

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 parties, Respondents Geneos and SAI are assessed the following:

#### **Respondent Geneos**

Member Surcharge	= \$150.00
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#### **Respondent SAI**

Member Surcharge	= \$150.00
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#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

November 8, 2017, postponement by the parties = \$ 50.00

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Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fee of \$50.00 to Claimant.

**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: August 28, 2017 1 session

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

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Total Hearing Session Fees = \$100.00

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**

Barry David Thorpe

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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**

/s/ Barry D. Thorpe

Barry David Thorpe  
Sole Public Arbitrator

December 14, 2017

Signature Date

December 14, 2017

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