

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Woodbury Financial Services, Inc.

Hearing Site: Chicago, Illinois

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Dochter Kennedy, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Woodbury Financial Services, Inc. ("Respondent"): Bradley A. Fishman, Esq., Woodbury Financial Services, Inc., Jersey City, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: April 21, 2017.

Amended Statement of Claim filed on or about: May 1, 2017.

████████████████████ signed the Submission Agreement: April 21, 2017.

Statement of Answer filed on or about: June 8, 2017.

Woodbury Financial Services, Inc. signed the Submission Agreement: June 8, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: request for expungement. The cause of action related to customer complaints against Claimant. The customers in the underlying complaints ("Customers") alleged overestimation of insurance coverage, failure to disclose commission rate, suitability, and failure to conduct adequate due diligence. The Customers allegations related to various unspecified life insurance policies, Six Forks LLC, a tenant-in-common ("TIC") exchange, and the triple net lease ("NNN") Riverwood Place TIC.

In the Statement of Answer, Respondent did not oppose Claimant's request for expungement and reserved the right to seek attorneys' fees and arbitration costs against Claimant.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$1.00 in damages, Claimant requested expungement of all references to Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), and other appropriate relief.

In the Statement of Answer, Respondent did not specifically delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 31, 2017, Claimant filed a Service Letter to the customer in Occurrence Number [REDACTED] ("Customer RS"), in which the Claimant served the Statement of Claim and notified Customer RS of the date and time of the telephonic hearing.

On or about October 31, 2017, Claimant filed a Service Letter to the customer in Occurrence Number [REDACTED] ("Customer GW"), in which the Claimant served the Statement of Claim and notified Customer GW of the date and time of the telephonic hearing.

On or about November 1, 2017, Claimant filed the Affidavit of Armin Sarabi, in which Claimant's counsel attested to the efforts made to serve the customer in Occurrence Number [REDACTED] ("Customer RW") with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on December 12, 2017, for the presentation of testimony and evidence on [REDACTED] request for expungement.

At the telephonic hearing on Claimant's request for expungement, Claimant withdrew her request for \$1.00 in compensatory damages against Respondent, and her request for expungement of Occurrence Number [REDACTED].

The Customers did not participate in the expungement hearing and did not contest the request for expungement.

Respondent did not participate in the expungement hearing and did not contest the request for expungement.

In his Order dated December 12, 2017, the Arbitrator ordered Claimant to obtain and file the application and paperwork for Customer RW's Life Insurance Policy, and the associated Prospectus referred to in testimony ("Post-Hearing Submissions"), by December 22, 2017. On or about December 22, 2017, Claimant requested an extension to file the Post-Hearing Submissions. In his Order dated December 27, 2017, the Arbitrator granted Claimant's request for an extension to file the Post-Hearing Submissions and set a new deadline of January 21, 2018. No post-hearing submissions were received.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents for Occurrence Number [REDACTED] considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator found that the settlement was not conditioned on the Customers not opposing the request for expungement. The Arbitrator also found that [REDACTED] did not contribute to the settlement amount. The Arbitrator found that there was no settlement relating to Occurrence Number [REDACTED].

The Arbitrator found that [REDACTED] did not previously file a claim requesting expungement of Occurrence Numbers [REDACTED] or [REDACTED] from the CRD.

The Arbitrator found that [REDACTED] did previously file a claim requesting expungement of Occurrence Number [REDACTED]; however the Amended Statement of Claim states that Respondent previously filed a motion for expungement on the Claimant's behalf, but that no hearing was held on that request. Claimant withdrew her request for the expungement of Occurrence Number [REDACTED] during the December 12, 2017, hearing because she found that the Award in that earlier proceeding had, in fact, granted expungement of Occurrence Number [REDACTED].

In recommending expungement of Occurrence Number [REDACTED] the Arbitrator relied upon the following documentary or other evidence:

- The Customer Complaint Letter, dated July 31, 2005.
- Hartford Life and Annuity Insurance Company's ("Hartford") fax to Respondent regarding Complaint, dated August 5, 2005.
- Claimant's Letter to Respondent regarding Response to Complaint, dated August 9, 2005.
- Unnamed Broker's Letter to Respondent regarding Responses to Complaint, dated August 10, 2005.
- Claimant's Email to Respondent regarding Complaint, dated August 14, 2005.
- Respondent's Letter to Hartford regarding Responses to Complaint, dated August 15, 2005.
- Hartford's Letter to Customer Denying Complaint, dated September 8, 2005.

In recommending expungement of Occurrence Number [REDACTED] the Arbitrator relied upon the following documentary or other evidence:

- Broker/Dealer Representations and Warranties.
- Credit Authorization, signed February 20, 2008.
- Exchange Inquiry Authorization.
- Customer's Financial Statement, signed February 20, 2008.
- New Account Form, signed February 21, 2008.
- Point of Sale Form - 1035 Property Exchange, signed February 21, 2008.
- Purchaser Questionnaire - Six Forks Station.
- Settlement Agreement, dated May 13, 2013.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the sole issue of expungement 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 [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 ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact as to Occurrence Numbers [REDACTED] and [REDACTED]:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding in regards to Occurrence Number [REDACTED] based on the following reasons:

Customer RW had existing life insurance. Claimant testified that she advised Customer RW to consolidate his policies and use the cash value to purchase a new policy with improved cash benefits and also end the necessity of making existing payments. Claimant testified that the estimated coverage was based on a quoted preferred rate based on basic medical information provided by Customer RW. She further testified that she advised Customer RW of the underwriting process; that the transaction was subject to the underwriter's approval and that she had no control over underwriting. The application was completed on October 25, 2004 and on February 28, 2005, Customer RW signed an "illustration" containing various disclosures.

The amount of coverage was lowered twice from the estimate. Claimant testified that underwriting found a physician's statement which resulted in coverage at the standard rate rather than the preferred rate. Despite the lower coverage amount, the evidence shows that Customer RW realized a substantial improvement in his contractual cash benefit. Claimant further testified that Customer RW was provided with all required disclosures and information and that all terms, costs, fees and benefits were explained to him. Claimant's testimony and Hartford's Letter to Customer Denying Complaint, dated September 8, 2005, show that by February 28, 2005, Customer RW had been provided, by Hartford, with all disclosures including a statement as to the amount of insurance. At that time, Customer RW was also provided with a "Right to Examine Policy" notice giving Customer RW 10 days to review the policy and to request a rescission of the

contract including a full refund if not satisfied. Customer RW accepted the contract and made no complaint at that time. It was not until July 31, 2005 that Customer RW requested a cancellation of his policy. The circumstances were fully reviewed by Hartford and Customer RW's letter of July 31, 2005 was addressed in detail by that company on September 8, 2005.

The Arbitrator asked the Claimant to provide copies of the Application, Prospectus and other relevant documentation. Claimant did not possess copies of said documents and on January 11, 2018, filed correspondence with Hartford to show said documents could not be obtained by Claimant. Nevertheless, the testimony of Claimant seems fully corroborated by the Hartford letter of September 8, 2005 and documents prepared by Claimant and Respondent for the Hartford investigation.

As a result of its review, Hartford concluded that "it appears there was full disclosure, and that due diligence was made at the time of sale." Customer RW's claim was rejected by Hartford. No settlement was offered or made. Nothing in the record reflects that Customer RW pursued his claim after the Hartford review letter of September 8, 2005. The Panel concludes that Claimant should be granted Expungement because the evidence shows Customer RW was not relying on any representation by her at the time of his acceptance of the policy contract with Hartford.

The Arbitrator has made the above Rule 2080 finding in regards to Occurrence Number [REDACTED] based on the following reasons:

Customer RS invested in Six Forks LLC as a tenant-in-common Section 1031 exchange. Customer RS later filed a FINRA arbitration alleging that Six Forks LLC was not a suitable investment. Claimant was not named as a Respondent in that proceeding, but with respect to this matter appearing on Claimant's CRD Record, the Customer RS allegation is contradicted by the evidence. The suitability of an investment is made at the time of the investment. There are no facts tending to show that Six Forks LLC was unsuitable at the time of the investment, or that Claimant failed to show due diligence or failed to make full disclosure of all information available including risks, costs and benefits. Customer RS was an experienced real estate investor and Claimant testified that he selected Six Forks LLC from several investment options presented by Claimant. Further, Customer RS signed a New Account form on February 21, 2008 in which Customer RS indicated that Customer RS's Risk Tolerance was "Aggressive" ("will tolerate large market fluctuations") and Investment Objectives were "Speculative" ("may experience dramatic swings in value and a high probability of capital loss"). Claimant was not named as a Respondent in the FINRA Arbitration and she testified that Customer RS remains her customer to this day. She further testified that Customer RS's dissatisfaction with Six Forks LLC did not arise initially, but rather arose as the result of the bank's business decision to liquidate the investment subsequent to the market collapse in the Fall of 2008 to the detriment of the investors. At that time Six Forks LLC was not "under water." The Arbitrator found Claimant's testimony credible. Claimant did not participate in the settlement or make a financial contribution thereto.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Woodbury Financial Services, Inc. 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, including a pre-hearing conference with the arbitrator, 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 25, 2017 1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: December 12, 2017 1 session	

Total Hearing Session Fees	=\$ 100.00
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The Arbitrator has assessed \$100.00 of the hearing session fees to [REDACTED]

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

ARBITRATOR

Kenneth N. Adamson

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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/ Kenneth N. Adamson

Kenneth N. Adamson
Sole Public Arbitrator

January 30, 2018

Signature Date

January 30, 2018

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

ARBITRATOR

Kenneth N. Adamson

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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

Kenneth N. Adamson

Kenneth N. Adamson
Sole Public Arbitrator

1/30/2018

Signature Date

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