

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE # [REDACTED]

[REDACTED] (Claimant) vs. Citigroup Global Markets, Inc. (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED] Dochter Kennedy, MBA., J.D., and Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc.: David I. Hantman, Bressler Amery & Ross, New York, New York.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: June 22, 2017.

Statement of Answer filed on or about: August 16, 2017.

CASE SUMMARY: Claimant asserted a claim for expungement of FINRA Arbitration Case No. [REDACTED] customer dispute occurrence number [REDACTED] ("Underlying Arbitration") from his Central Registration Depository ("CRD") record.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitration from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous.
2. Expungement of the Underlying Arbitration from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false.
3. Compensatory damages in the amount of \$1.00 from Respondent.
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent does not oppose the requested expungement relief but denies any allegations of wrongdoing and objects to Claimant's request for \$1.00 in compensatory damages.

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

On August 23, 2017, Claimant filed its letter dated August 23, 2017 to the customer in the Underlying Arbitration ("Customer") providing him with a copy of the Statement of Claim. On August 24, 2017, Claimant filed an affidavit dated August 24, 2017, stating that Claimant's counsel had served the Statement of Claim on the Customer by U.S. Certified Mail. On November 30, 2017, Claimant filed its letter dated November 30, 2017, to the Customer providing him with notice of the date and time of the expungement hearing.

The Arbitrator conducted a telephonic recorded hearing on February 6, 2018, so the parties could present oral argument on Claimant's request for expungement. Respondent appeared at the expungement hearing and did not oppose Claimant's

expungement request.

The Arbitrator found that the Customer was properly notified of the expungement hearing and did not appear at the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement agreement in the Underlying Arbitration between the Customer and Morgan Stanley Smith Barney (n/k/a Citigroup Global Markets, Inc.), 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 the Customer not opposing the request for expungement. The Arbitrator also noted that Claimant was not a named party in the settlement agreement and did not contribute to the settlement amount.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: pleadings in the Underlying Arbitration; settlement agreement; Customer's 2005 Account Verification Profile; Customer's 2008 Account Verification Profile; Claimant's Brokercheck® Report; Claimant's notice dated August 23, 2017 to the Customer of the expungement request; Claimant's notice dated November 30, 2017 to the Customer of the expungement hearing; and Claimant's testimony.

By order dated February 8, 2018, the Arbitrator requested that Claimant confirm whether or not he has previously sought expungement of this claim. On February 9, 2018, Claimant confirmed that he "has never requested expungement. This proceeding is Claimant's first request for expungement. Additionally, the request for \$1 in compensatory damages was withdrawn at the hearing." Accordingly, the Arbitrator notes that Claimant did not previously file a claim requesting expungement of the Underlying Arbitration and that the request for \$1.00 in compensatory damages was withdrawn at the hearing.

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 the registration records maintained by the CRD for Respondent [REDACTED] (CRD# [REDACTED] with the understanding that pursuant to Notice to Members 04-16, Respondent [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 finding based on the following reasons:

The Customer was clear about his risk tolerance and that he was open to speculation. The Customer's 2005 Account Verification Profile confirmed that he was open to speculation; his primary goal was growth and he had moderate risk tolerance. In 2008, the Customer suffered some serious losses and Respondent sent him another Account Verification Profile which the Customer filled out the same way.

Claimant testified that there was cash in the Customer's account which he left as a "cushion" for the Customer. However, the Customer withdrew it to invest in other stocks, which showed that he was "enjoying the game".

Claimant left the firm in 2009 and another broker took over Claimant's account. At the time Claimant left, the Customer had not filed any complaints, nor had he changed his profile or his investments. This shows that the Customer thought that the stocks were suitable. The Underlying Arbitration wasn't filed until 2013 and Claimant wasn't named. Further, the Customer did not object to Claimant's expungement request.

2. Any and all relief not specifically addressed herein 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.*

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision = \$200.00

Claimant(s) submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$200.00

The Panel has assessed \$200.00 of the discovery-related motion fees 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: October 25, 2017	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: February 6, 2018	1 session

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

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

ARBITRATOR

Katherine H. O'Neil

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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/Katherine H. O'Neil

Katherine H. O'Neil
Sole Public Arbitrator

February 15, 2018

Signature Date

February 16, 2018
Date of Service (For FINRA-ODR office use only)