

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Dirks & Company, Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Dirks & Company, Inc.: Jessy Dirks, Dirks & Company, Inc, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 27, 2017.

████████████████████ signed the Submission Agreement: July 27, 2017.

Dirks & Company, Inc. did not file a Statement of Answer and did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. expungement of the underlying claim 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 claim 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 underlying claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. an award of compensatory damages in the amount of \$1.00 from the Respondent; and
5. any and all other relief that the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement or Statement of Answer but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

Respondent Dirks & Company, Inc. did not appear at the evidentiary hearing. Upon review of the file, the Arbitrator determined that Respondent Dirks & Company, Inc. has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

On or about August 18, 2017, Claimant provided FINRA Dispute Resolution with proof that he notified the customer related to occurrence number [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.

The Arbitrator conducted a recorded telephonic expungement hearing on February 13, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED], but did not review a fully executed Settlement Agreement related to occurrence number 839108 because it could not be located. However, [REDACTED] testified that he was not a party to the settlement and did not contribute to the settlement amount. The Arbitrator found [REDACTED] testimony to be credible and believes that expungement is appropriate since Claimant was not party to the Settlement Agreement and no fully executed Settlement Agreement was able to be produced. Given that the Claimant was a Compliance Officer whose only involvement with the customer was trying to help a secretary understand what the customer was saying and who had no authority to act on behalf of Dirks & Co. as he already had been terminated from employment and was on severance, it is reasonable to presume there would be no condition in the settlement agreement that would have obligated the customer to not

oppose expungement. There was no reason for naming the Claimant in the underlying complaint other than counsel naming everyone even without factual support.

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

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

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. The Arbitrator recommends the expungement of all references to occurrence number [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; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

Claimant denies that he held any supervisory authority over the registered representative of the Respondent's firm who made an unauthorized trade of 2000 shares of PALM, Inc. shares on March 7, 2000. Claimant was a compliance officer for the Respondent from January 14, 1999 to November 1999. Claimant had five (5) months of severance upon termination until May 2000. Claimant had no

responsibility for anyone during this severance period and mostly job-hunted and completed job reports. Claimant alleged that his only involvement with the customer

was to assist with a call from the customer due to a language barrier. The customer's Statement of Claim alleged that the Claimant was "in a position to supervise and prevent the unauthorized transaction to his account". There is no evidentiary support for this and Claimant's BrokerCheck® Report under "Employment History" lists [REDACTED] employment start date and end date for the Respondent as "01/04/1999" and "05/15/2000". The same BrokerCheck® Report lists his employment start date for his next employer, Level Jump Trading, Inc., as "05/01/2000". [REDACTED] testified that he had been terminated and was on severance from the Respondent for at least the period from January 1, 2000 to May 1, 2000. He could not supervise and prevent an unauthorized trade by the registered representative on March 7, 2000 because he was not an employee of the Respondent then.

There has been no evidence presented that the Claimant had or could have had any supervisory authority over the registered representative for a trade that took place three (3) months after the Claimant was terminated and was at Respondent's facility only because of severance. The Claimant's BrokerCheck® Report shows no other customer complaints save for the one reported with respect to the customer over 17 years ago. It is reasonable to presume given the absence of controverting evidence, the Claimant's terminated position, and his allegation that as a severed employ he was just trying to assist in handling a language barrier, that all the reasons set forth in the Statement of Claim are true.

2. 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 event(s) giving rise to the dispute. Accordingly, as a party, Dirks & Company, Inc. is assessed the following:

Member Surcharge	= \$ 150.00
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ARBITRATOR

Brooks White

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Brooks White
Sole Public Arbitrator

2/26/2018

Signature Date

February 27, 2018

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