

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Goldman, Sachs and Company (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED] ("Claimant"): Eric Litow, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Goldman Sachs and Company ("Respondent"): C. Evan Stewart, Esq., Cohen & Gresser, LLP, New York, New York.

NATURE OF DISPUTE: Associated Person vs. Member

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

Statement of Answer filed by the Respondent on or about: May 16, 2017.

CASE SUMMARY: In the Statement of Claim, Claimant requested expungement of a customer complaint, occurrence number [REDACTED] ("Underlying Claim") from his Central Registration Depository ("CRD") record.

In the Answer, Respondent advised that it takes no position, for or against, the Claimant's request for expungement.

RELIEF REQUESTED:

In the Statement of Claim, Claimant requested:

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

In the Answer, Respondent requested that Claimant's request for compensatory damages against Respondent be denied, and that all forum fees and related costs of this proceeding be borne solely by Claimant.

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

In the Initial Pre-hearing Conference Scheduling Order dated July 17, 2017 ("IPHC Order"), the Arbitrator ordered that Claimant's counsel give notice, within 10 calendar days of the receipt of the IPHC Order, to Mr. M (the customer in the Underlying Claim)

along with a copy of the Statement of Claim and the Answer upon which the request for expungement is based.

On July 26, 2017, Claimant filed a copy of correspondence dated that same day and sent to Mr. M via U.S. Certified Mail that contained a copy of the Statement of Claim. The correspondence also advised Mr. M that although he is not required to, nor under a duty to do so, he may participate in the hearing or submit written documentation. That same day, Respondent submitted a letter advising that Claimant did not inform Mr. M of the date or location of the hearing, and requested that notice be sent. On July 31, 2017, Claimant filed a copy of correspondence dated that same day and sent to Mr. M via U.S. Certified Mail that contained a copy of the FINRA Case Information Sheet, including the scheduled hearing time and date.

Mr. M submitted a response dated October 2, 2017 challenging the allegations in Claimant's Statement of Claim. On October 3, 2017, Claimant filed a Motion to Amend the Statement of Claim. On the same day, Respondent filed a response to the motion. By order dated October 11, 2017, the Arbitrator denied the motion on the basis that the Amended Statement of Claim does not add to nor take away from the underlying facts as set out in the original Statement of Claim.

A recorded in-person expungement hearing was scheduled to take place on November 9, 2017. On November 9, 2017, neither Claimant's counsel nor Claimant appeared in-person at the hearing; instead, only Claimant's counsel appeared telephonically and Respondent's counsel appeared in-person. The Arbitrator determined to postpone the expungement hearing as the Arbitrator considered Claimant's physical presence to be critical. By Order dated November 13, 2017, the Arbitrator ordered, among other items, that Claimant advise Mr. M of the agreed to reconvening expungement hearing date, time and location, and that Claimant reimburse Respondent for his air fare and hotel costs for appearing at the in-person hearing.

On January 3, 2018, FINRA Office of Dispute Resolution sent Mr. M notice of the date, time and location of the expungement hearing. On January 6, 2018, Mr. M advised that he would like to appear by telephone. On January 15, 2018, Claimant filed a copy of correspondence sent to Mr. M via U.S. Certified Mail that contained the date, time and location of the rescheduled expungement hearing. On January 17, 2018, Claimant filed a sworn Affidavit by Claimant's counsel wherein he stated that he served Mr. M with notice of the expungement hearing via U.S. Certified mail.

On February 23, 2018, Mr. M verbally advised FINRA staff that he would not participate in the expungement hearing. He further stated that his position on this matter is sufficiently expressed in his letter dated October 2, 2017.

The Arbitrator conducted a recorded in-person hearing on February 28, 2018 so the parties could present oral argument and evidence on Claimant's expungement request. Respondent participated in the expungement hearing and did not contest the request for expungement. Mr. M did not participate in the expungement hearing and advised in his letter dated October 2, 2017 that he has no interest in taking a position as to the adjudication of the expungement request.

The Arbitrator reviewed Claimant's BrokerCheck® Report and the settlement documents from the Underlying Claim, 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 of the Underlying Claim was not conditioned on Mr. M not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount for the Underlying Claim.

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:

- 1) Order to Parties to Produce Documents;
- 2) Order on Motion to Amend the Statement of Claim;
- 3) Interim Order on Claimant's Request for Expungement;
- 4) Amended Interim Order on Claimant's Request for Expungement;
- 5) Order to Claimant to Produce Documents;
- 6) Letter dated October 2, 2017 from Mr. M to FINRA with Exhibits (II);
- 7) Production of Documents Pursuant to Arbitrator's Order Dated November 13, 2017;
- 8) Affidavit of Service (Notice to Customer) and Copy of Claim for Expungement and Notice of the Hearing on February 28, 2018 at Clark Tower, Memphis, Tennessee, Suite 2700;
- 9) Claimant's Witness List;
- 10) Notice from FINRA that Mr. M has advised that he will not participate in the hearing in this matter and that his position on this matter is sufficiently expressed in his letter dated October 2, 2017 to FINRA and forwarded to the Arbitrator on October 3, 2017;
- 11) Claimant's most recent BrokerCheck® Report; and
- 12) Claimant's testimony during the hearing.

At the opening of the February 28, 2018 expungement hearing, Claimant withdrew his request for compensatory damages.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

AWARD: After considering the pleadings, the testimony and evidence presented at the February 28, 2018 expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

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 (“Code”), the Arbitrator has made the following Rule 2080 affirmative finding of fact: The claim, allegation, or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons: The Underlying Claim is clearly erroneous in that the account was first opened by Mr. M as a non-discretionary account and that Claimant, after consulting with his compliance officer and manager, determined that Respondent could not handle a small account such as Mr. M wanted to have managed. Upon determining Respondent could not handle Mr. M’s account on a non-discretionary basis, Respondent advised Mr. M of the decision and, in turn, Mr. M agreed that his account would be a discretionary account. It being a discretionary account, Claimant bought and sold investments in said account without objection from Mr. M. It was not until some two years after the trade occurred that it was objected to by Mr. M. Claimant voluntarily left Respondent’s employ at or about the time of the trade and had no further dealings thereafter.

OTHER FEES: Pursuant to the Code, the following fees are assessed:

Filing Fees

The 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 a party, Goldman, Sachs and Company is assessed the following:

Member Surcharge	= \$ 150.00
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Postponement Fees

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

November 9, 2017, postponement by Claimant	= \$ 50.00
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Total Postponement Fees	= \$ 50.00
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The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

November 9, 2017, postponement requested by Claimant	= \$ 600.00
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Total Last Minute Cancellation Fees	= \$ 600.00

The Arbitrator has assessed \$600.00 of the last minute cancellation 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, including a pre-hearing conference with the arbitrator, which 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 July 17, 2017 1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: February 28, 2018 1 session	

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Total Hearing Session Fees	= \$ 100.00

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

Stephen H. Biller

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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/Stephen H. Biller

Stephen H. Biller
Sole Public Arbitrator

March 12th, 2018

Signature Date

March 20, 2018
Date of Service (For FINRA-ODR office use only)