

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Dallas, Texas

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent"): Sarah Yates, Esq., Bressler Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2017.

Claimant signed the Submission Agreement: July 28, 2017.

Statement of Answer filed on or about: September 27, 2017.

Respondent signed the Submission Agreement: September 25, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement. Claimant requested expungement of two customer disputes, Occurrence Numbers ██████████ and ██████████ from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent took no position on Claimant's requests for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages:

\$1.00

Other Non-Monetary Relief:

Expungement

In the Statement of Answer, Respondent objected to the request for \$1.00 in compensatory damages as it was obligated to report these customer disputes pursuant to FINRA rules and did so properly.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about August 10, 2017, Claimant filed a copy of the letters sent to Customers Y.T., B.T., and S.M., providing them with the Statement of Claim and notice of the requests for expungement. Hereinafter, Customers Y.T., B.T., and S.M. are collectively referred to as the "Underlying Customers." On or about August 14, 2017, Claimant filed an Affidavit of Service, signed by Claimant's counsel, advising that the Underlying Customers have been served with the Statement of Claim.

On or about November 15, 2017, Claimant filed a Notice of Request for Telephonic Hearing on Expungement. No Response was filed. In the Initial Pre-Hearing Conference Order dated November 29, 2017, the Arbitrator granted the Request for a Telephonic Hearing on Expungement.

On or about December 7, 2017, Claimant filed a copy of follow-up letters sent to the Underlying Customers with the date of the expungement hearing and the opportunity to appear and/or submit written documentation.

On or about January 9, 2018, counsel for Customers Y.T. and B.T. filed a letter with FINRA that they disagreed with many of Claimant's factual assertions. Customers Y.T. and B.T. asserted that the facts of this matter were more accurately set forth in their Petition filed in the Dallas County lawsuit.

On or about January 31, 2018, Claimant filed his BrokerCheck® Report.

On or about February 8, 2018, counsel for Customers Y.T. and B.T. advised FINRA that neither he nor the customers would participate in the expungement hearing.

On or about February 16, 2018, Claimant filed Submission of Expungement Hearing Exhibits 2-4, which included the complaints of the Underlying Customers and the Settlement Agreement for Customers Y.T. and B.T.

The Arbitrator conducted a recorded, telephonic hearing on February 19, 2018, so the parties could present oral argument and evidence on Claimant's requests for expungement. Respondent did participate in the expungement hearing and did not contest the requests for expungement. Customer S.M. did not respond to the letters nor did she participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator found that the Settlement Agreement for Occurrence Number [REDACTED] was entered into between Customers Y.T. and B.T., Respondent, Transamerica

Advisors Life Insurance Company, and Claimant. It recited that Respondent made the settlement payments to Customers Y.T. and B.T., and Claimant testified that he did not contribute any amount to the payment. The Arbitrator noted that the settlement amount was less than one-sixth of the amount of damages alleged in Customers Y.T. and B.T.'s claim letter to Respondent. Thus, it is not significant in relation to the total claim. The Arbitrator noted that the settlement was not conditioned on Customers B.T. and Y.T. not opposing the request for expungement.

The Arbitrator found that the settlement agreement for Occurrence Number [REDACTED] was in the form of a General Release ("Release") entered into by Customer S.M., Respondent, Merrill Lynch Life Agency, Inc., and MetLife Investors USA Insurance Company. Claimant was not a party to the Release, which recited that Respondent and Merrill Lynch Life Agency, Inc. shall make the settlement payments to Customer S.M., and Claimant testified that he did not contribute any amount to the payment. The settlement amount was a little more than two-thirds of the amount of actual damages alleged in Customer S.M.'s claim letter to Respondent. Respondent settled with Customer S.M. in order to avoid the cost of defending against arbitration or litigation. The Arbitrator noted that the settlement was not conditioned on Customer S.M. not opposing the request for expungement. Claimant testified that Customer S.M. is still his client.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement of Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; Customers Y.T. and B.T.'s undated written claim to Respondent; correspondence from Customers Y.T. and B.T.'s counsel; Customers Y.T. and B.T.'s Petition filed in the Dallas County lawsuit; the Settlement Agreement between the Customers Y.T. and B.T., Transamerica, Claimant, and Respondent; and Claimant's testimony.

In recommending expungement of Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; Customer S.M.'s written claim to Claimant; the General Release from Customer S.M. to Respondent, Merrill Lynch Life Agency Inc., and MetLife Investors USA Insurance Company, et al.; and Claimant's testimony.

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

At the hearing and in the Order dated February 21, 2018, the Arbitrator left the record open until Claimant filed a post-hearing submission. On or about February 23, 2018, Claimant's post-hearing submission, Submission of Expungement Hearing Exhibit 5, which was the General Release of Customer S.M., was sent to the Arbitrator for consideration.

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 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 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:

Occurrence Number [REDACTED]:

The Statement of Claim alleges and Claimant testified that he did not recommend the investments, nor did he fail to provide valuation information to the Customers Y.T. and B.T. in a timely manner. Claimant also testified that the annuity purchases were unsolicited and were requested by Customers Y.T. and B.T., and that periodic valuations were provided by the annuity companies directly to Customers Y.T. and B.T. Thus, Claimant did not fail to timely provide valuation information. Claimant also testified that he did not misrepresent the potential return on the investments and that written disclosures from the annuity issuer fully describing the characteristics of the annuities were given to Customers Y.T. and B.T. prior to the purchases. The claim of unsuitable investment recommendations, misrepresentation, and failure to provide valuations by Claimant are not supported by the evidence.

Occurrence Number [REDACTED]

Claimant testified that Customer S.M. represented to him that the source of the funds for the original purchase of the annuity being cashed out was personal savings, so he did not know that Customer S.M. had earlier made a tax-free exchange to acquire the annuity. Thus, Claimant did not know she would incur income tax on the annuity cash out. The claim of failure to disclose, unsuitable recommendations, and misrepresentation by Claimant are not supported by the evidence.

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

**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, Merrill Lynch, Pierce, Fenner & Smith, Inc. is assessed the following:

Member Surcharge = \$150.00

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: November 29, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 19, 2018 1 session

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

Joseph Neal Richardson

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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/ Joseph Neal Richardson

Joseph Neal Richardson
Sole Public Arbitrator

March 21, 2018

Signature Date

March 21, 2018

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

ARBITRATOR

Joseph Neal Richardson

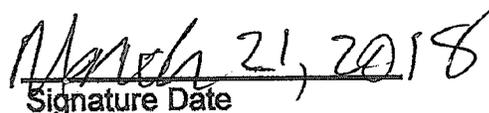
Sole Public Arbitrator

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



Joseph Neal Richardson
Sole Public Arbitrator



Signature Date

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