

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Wilmington, Delaware

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (██████████): Michael Bessette, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

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

**CASE INFORMATION**

Statement of Claim filed on or about: October 13, 2017.  
Claimant signed the Submission Agreement: October 13, 2017.

Statement of Answer filed by Respondents on or about: December 8, 2017.  
Respondent signed the Submission Agreement: December 8, 2017.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Respondent did not oppose the request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement of his CRD records, and any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent requested Claimant's expungement request be granted, dismissal of all requested damages, and assessment of all costs and fees against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

The Arbitrator ordered Claimant to provide service of the Statement of Claim and notice of the expungement hearing. The Claimant provided an Affidavit dated March 2, 2018 as proof of service of the Statement of Claim to the customers in occurrence #s [REDACTED] and [REDACTED]. By letters dated February 22, 2018, the Claimant provided notice of the expungement hearing to the customers in occurrence #s [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on March 12, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement. The Claimant withdrew his request for compensatory damages at the hearing.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED].

The Arbitrator noted that [REDACTED] 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: CRD report, and correspondence included in the exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the 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 #s [REDACTED] and [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; and  
the claim, allegation, or information is false.

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

**Occurrence # [REDACTED]:**

In this reported incident, the customer alleged that his “accounts were mismanaged” in the time period of 1996-2002. It appears from the testimony that the customer’s portfolio consisted largely of technology stocks purchased through his previous broker. Despite Claimant’s numerous efforts to get him to diversify his portfolio, the customer never did. As a result, the crash in the technology/dot.com sector from 2000 to 2002 had a particularly pernicious impact on his portfolio valuation. The claim was denied by Merrill Lynch, and the customer took no further action by way of litigation or arbitration.

**Occurrence # [REDACTED]**

In this reported incident, the customer alleged that he was not made aware of the surrender charges on a deferred variable annuity. Subsequently, on the advice of a different Investment Advisor, the customer decided to cash in the annuity and corresponded with Merrill Lynch in an attempt to claw back the surrender penalty. The claim was denied, and the customer did not pursue it in litigation or arbitration. It appears from the evidence that the customer received and acknowledged receipt of all requisite purchase documents in which the surrender penalty was fully disclosed.

By reason of the foregoing, the undersigned finds that the requirements of Rule 2080 (A) and (B) have been met with regards to both occurrences. In occurrence # [REDACTED], the customer’s claim that his account was somehow “mismanaged” is not supported by any evidence and is clearly erroneous, false or both. Similarly in occurrence # [REDACTED], the customer’s claim that he was unaware of the surrender penalty on an annuity he held for over 10 years and subsequently added to with all the attendant signed disclosures of such penalty is also clearly erroneous, false or both.

Claimant testified that he had made no prior application for the relief sought herein. He also testified to the adverse impact these disclosures have had on his marketing and business development efforts. The interest of consumer protection and awareness being in no way implicated, the undersigned recommends that occurrence #s [REDACTED] and [REDACTED] be expunged from Claimant’s CRD.

## 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 events giving rise to the dispute. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith, 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:      January 29, 2018                      1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date:                      March 12, 2018                      1 session	

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

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

**ARBITRATOR**

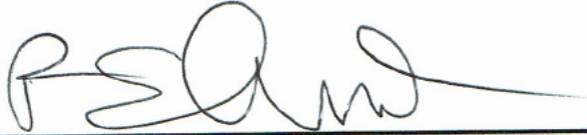
Robert E. Anderson

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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**



Robert E. Anderson  
Sole Public Arbitrator

3/26/18

Signature Date

March 27, 2018

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