

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 23, 2017.

[REDACTED] signed the Submission Agreement: August 23, 2017.

Statement of Answer filed by Respondent on or about: November 10, 2017.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: November 14, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from her CRD records; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for compensatory damages. Respondent took no position regarding Claimant's request for expungement of her CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded in-person hearing on March 27, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customers in the underlying claims did not participate in the expungement hearing. The Arbitrator determined that the customers received a copy of the Statement of Claim and received due notice of the expungement hearing and that the hearing would proceed without the customers present. The customers did not oppose Claimant's request for expungement.

At the hearing, Claimant withdrew her request for compensatory damages.

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

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED]

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: pleadings; testimony of Claimant as to the investment profile of each complainant, the rationale for recommending the investments in question to each of them, and the oral and written disclosures made to each of them; documentation supporting the foregoing; and Claimant's BrokerCheck Report.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 reference to occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from registration records maintained by the Central Registration Depository ("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 directives.

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 finding of fact:

The claim, allegation, or information is false.

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

Occurrence number [REDACTED]

Respondent settled the customers' claim. Claimant testified that she did not contribute to the settlement. The settlement was for only \$25,000.00 on a \$300,000.00 claim which is not deemed to be an admission of culpability. The settlement agreement was not available due to the age of the settlement. The Arbitrator noted that the settlement was not conditioned on the customers not opposing the request for expungement. At the hearing, the Claimant established the soundness of the investment recommendations which she had made and the appropriate disclosure to the customer of the risks presented.

Occurrence Number [REDACTED]

Respondent settled the customer's claim. Claimant testified that she did not contribute to the settlement. The settlement consisted of the purchase by Respondent from customer for \$75,000.00 of \$75,000.00 principal amount of auction rate securities which had suddenly become illiquid because of the collapse of the credit markets. The customer was anxious to have immediate cash, even though the securities were still paying interest, and (as a result of the illiquidity) at an exceptionally high rate. The securities eventually became fully liquid, so it is unlikely that Respondent had any loss for the transaction. The settlement agreement was not available due to the age of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement.

Occurrence Number [REDACTED]

The customer complaint was found by Respondent to be without merit and the customer did not pursue the claim. At the hearing, the Claimant established the soundness of the investment recommendation which she had made, the appropriate disclosure to the customer of the risks presented, and the unprecedented circumstances which caused the investment to lose value.

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: December 21, 2017 1 session	

One (1) hearing session @ \$50.00/session	= \$ 50.00
Hearing Date: March 27, 2018 1 session	

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.

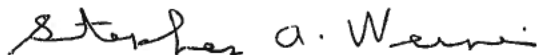
ARBITRATOR

Stephen A. Weiner

- 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



Stephen A. Weiner
Sole Public Arbitrator

4/10/17

Signature Date

April 17, 2018

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