

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number

██████████

vs.

Respondents

First Montauk Securities Corporation  
QA3 Financial Corporation

Hearing Site: San Francisco, California

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ ("Claimant"): Dochter Kennedy, MBA, J.D. and Eric Litow J.D., AdvisorLaw, LLC, Broomfield, Colorado.

Respondents First Montauk Securities Corporation and QA3 Financial Corporation, hereinafter collectively referred to as "Respondents," did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: July 18, 2017.  
Claimant signed the Submission Agreement: July 18, 2017.

Respondents did not file Statements of Answer.  
Respondents did not sign Submission Agreements.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement three customer dispute occurrences ("Underlying Claims") from his Central Registration Depository ("CRD") record: one customer complaint, occurrence number ██████████; and two FINRA arbitrations, occurrence numbers ██████████; and ██████████.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information are factually impossible or clearly erroneous;

2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(B), as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information are false;
4. Should the Panel chose not to exercise its discretion in the expunging occurrence number [REDACTED], Claimant requests that his BrokerCheck® Report and CRD record pertaining to this dispute be amended to state that its status is "Withdrawn";
5. Damages in the amount of \$1.00 from Respondents; and
6. Any and all other relief that the Arbitrator deems just and equitable.

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

The Arbitrator acknowledges that they have each read the pleadings and other materials filed by the parties.

Respondents First Montauk Securities Corporation and QA3 Financial Corporation did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

On or about September 19, 2017, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Claimant had served the Statement of Claim on: one of the customers in occurrence number [REDACTED] ("Mr. D"); the customers in occurrence number [REDACTED]; and that the customer in occurrence number [REDACTED] ("Mr. M") was deceased.

On February 1, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on three additional customers in occurrence number [REDACTED]. On the same date, Claimant provided notice that Claimant had served Mr. D and the customers in occurrence number [REDACTED] with the date and time of the expungement hearing.

On February 5, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Claimant had served the Statement of Claim on the additional customers in occurrence number [REDACTED] and that Claimant provided notice of the expungement hearing to all of the customers in occurrence numbers [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on February 15, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

The Arbitrator noted that neither of the Respondent firms named in this matter are in existence and were therefore not represented. One of the customers in occurrence number [REDACTED], participated in the expungement hearing and represented himself in contesting the expungement request. None of the other customers in occurrence numbers [REDACTED] or [REDACTED] participated in the expungement hearing.

On February 23, 2018, the Arbitrator ordered Claimant to submit proof to support the statement that Mr. M continued to invest with Claimant after withdrawing his complaint.

On February 26, 2018, Claimant submitted a declaration from Claimant's former manager at Respondent First Montauk Securities Corporation and two account statements for Mr. M.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that Mr. M's complaint was not settled and therefore there were no settlement documents for him to review.

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: Claimant's testimony and the February 26 declaration from Claimant's former manager.

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, and the post-hearing submissions, 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 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous.

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

Mr. M submitted a written complaint concerning management of his account, however, after the facts concerning his complaint were explained to him, he submitted a second letter stating that he misunderstood the circumstances

surrounding his complaint and stating that he was withdrawing his complaint. This letter could not be produced as it was addressed to the brokerage firm which no longer exists and Mr. M is deceased. At my request, a declaration by Claimant's manager at the time was submitted confirming the formal withdrawal of the complaint and evidence that Mr. M continued to invest with Claimant after withdrawal of the complaint. As further confirmation, the complaint is noted as "withdrawn" on the Respondent First Montauk Securities Corporation's report rather than as "denied" as is the case on Claimant's CRD record.

2. Claimant's request for expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD records is denied.
3. Claimant's request for \$1.00 in damages is denied.
4. Any and all claims for relief not specifically addressed herein are denied.

### **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
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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, Respondent First Montauk Securities Corporation is assessed the following:

Member Surcharge	=\$ 150.00
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Accordingly, as a party, Respondent QA3 Financial Corporation 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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:



**ARBITRATOR**

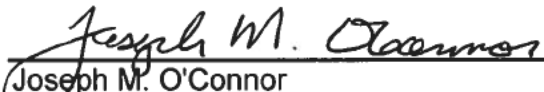
Joseph M. O'Connor

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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**

  
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Joseph M. O'Connor  
Sole Public Arbitrator

4-16-18  
\_\_\_\_\_  
Signature Date

April 18, 2018  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)