

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Berthel, Fisher & Company Financial
Services, Inc.

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Berthel, Fisher & Company Financial Services, Inc. ("Respondent"):
Shelley Davenport, Assistant Vice President, Berthel Fisher & Company Financial
Services, Inc., Cedar Rapids, Iowa.

CASE INFORMATION

Statement of Claim filed on or about: September 19, 2017.

Claimant signed the Submission Agreement: September 19, 2017.

Statement of Answer filed by Respondent on or about: November 15, 2017.

Respondent signed the Submission Agreement: November 15, 2017.

CASE SUMMARY

Claimant requested expungement of a FINRA arbitration case, occurrence number
██████████ ("Underlying Arbitration") from his Central Registration Depository ("CRD")
record.

In the Statement of Answer, Respondent advised that it takes no position on Claimant's
request for expungement and will defer an assessment of the merits to the Arbitrator.
Respondent further stated that its further participation in this matter is unnecessary and
does not anticipate appearing any further.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitration from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Arbitration from his CRD record pursuant to 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;
3. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claims, allegations or information is false;
4. Compensatory damages in the amount of \$1.00 from Respondent for its part in contributing to Claimant's injury; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. The Arbitrator deny Claimant's request for \$1.00 in damages and that no other relief against Respondent be awarded; and
2. Filing fees, hearing fees, etc. to be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 29, 2018, Claimant provided a copy of his notice to the customers in the Underlying Arbitration ("Customers") regarding the Statement of Claim and the expungement hearing. On January 30, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customers had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on March 28, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent and Customers did not appear at the expungement hearing. On March 28, 2018, Respondent confirmed in writing its non-attendance to the expungement hearing as stated in the Statement of Answer. The Arbitrator determined that the Customers were provided with notice of the hearing, but did not respond or otherwise indicate any interest in participating.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Arbitration.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement agreement in the Underlying Arbitration and considered the amount of payments made to the Customers and any other terms and conditions of settlement. The Arbitrator noted that Claimant did not contribute to the settlement amount and the settlement amount paled in comparison to the amount sought in the Underlying Arbitration. The Arbitrator noted that the settlement was not conditioned on the Customers not opposing Claimant's expungement request.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Customers' Statement of Claim filed with FINRA against Claimant and Respondent in the Underlying Arbitration and the answer to that Statement of Claim; confidential settlement between the Customers and Respondent; Claimant's BrokerCheck® Report and CRD Individual Snapshot Report, dated September 19, 2017; disclosure documents bearing on the investments named in the Underlying Arbitration; and Claimant's testimony.

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 the Underlying Arbitration, 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; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons: In the Underlying Arbitration, Customers alleged that Claimant: (1) recommended investments that were unsuitable; (2) acted negligently in some unspecified way; (3) breached fiduciary duties in some unspecified way; and (4) made unspecified misleading statements about the safety of the recommended investments. In the 600 pages of materials provided by Claimant, there is not a shred of evidence indicating that there might be something to allegations (2), (3), and (4). These allegations were clearly erroneous and false.

The first allegation, that Claimant recommended investments that were unsuitable, is also clearly erroneous and false. The Customers were accredited investors who sought greater investment income but declined to consider any

investment that held out that prospect other than real estate investment trusts (“REITs”). Accordingly, Claimant recommended REITs, all but one of which performed as advertised (the one that did not, turned out to be a Ponzi scheme that the FBI unraveled after more than a year of investigation). These REITs constituted a small portion of Customer’s portfolio. They were suitable.

2. Claimant’s request for \$1.00 in damages is denied.
3. 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
--------------------------	-----------

**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 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: January 8, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: March 28, 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

Mark R. Lee

-

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



Mark R. Lee
Sole Public Arbitrator

April 20, 2018

Signature Date

April 24, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)